

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(1) THE PRINCIPAL LEGISLATION/1. Fire services before 1 April 1948.

## **FIRE SERVICES (**

### **1. INTRODUCTION**

#### **(1) THE PRINCIPAL LEGISLATION**

##### **1. Fire services before 1 April 1948.**

The first general enactments relating to the provision of fire services by local authorities<sup>1</sup> were the Lighting and Watching Act 1833<sup>2</sup> and the Town Police Clauses Act 1847<sup>3</sup> which contemplated the provision of fire services by parishes and by boroughs and urban districts, respectively. The London Fire Brigade<sup>4</sup> owed its existence to the provisions of the Metropolitan Fire Brigade Act 1865<sup>5</sup>, but only with the Fire Brigades Act 1938, which constituted the council of every county borough and county district a fire authority<sup>6</sup>, did the provision of fire services outside the metropolitan area become obligatory<sup>7</sup>. The problems raised by the 1939-45 war necessitated a re-organisation of fire services and in 1941 the National Fire Service was established, under the control of the Secretary of State<sup>8</sup>, for the period of the emergency<sup>9</sup>, which came to an end immediately before 1 April 1948<sup>10</sup>.

1 This title is primarily concerned with fire services provided by local authorities. Unless the context otherwise requires, any subsequent reference to a fire brigade or a fireman is a reference to a local authority fire brigade or a member of such a brigade. As to private fire brigades see PARA 29 post. Gifts to fire brigades may be charitable: see CHARITIES vol 8 (2010) PARA 48.

2 See the Lighting and Watching Act 1833 s 44 (repealed). Power to adopt this Act was given to all parishes by s 4 (repealed).

3 See the Town Police Clauses Act 1847 s 32 (repealed). As to the application of this Act to particular towns and districts see s 1. In urban districts s 32 was incorporated with the Public Health Act 1875 by s 171 (repealed in this respect).

4 The force of firemen established under the Metropolitan Fire Brigade Act 1865 was named the London Fire Brigade by the London County Council (General Powers) Act 1904 s 46 (repealed).

5 See the Metropolitan Fire Brigade Act 1865 s 4 (repealed).

6 For the present meaning of 'fire authority' see PARA 17 post.

7 See the Fire Brigades Act 1938 (repealed).

8 As to the Secretary of State see PARA 10 post.

9 See the National Fire Service (General) Regulations 1941, SR & O 1941/1134 (revoked and replaced by SR & O 1944/1077 (revoked)) made under the Fire Services (Emergency Provisions) Act 1941 (repealed).

10 The appointed day for the purposes of the Fire Services Act 1947: see ss 38(1), 39(1); and the Fire Services (Appointed Day) Order 1948, SI 1948/325.

#### **UPDATE**

##### **1-3 Fire services before 1 April 1948 ... Fire precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **1 Fire services before 1 April 1948**

NOTE 10--1947 Act replaced by Fire and Rescue Services Act 2004.

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## **2. Fire services on and after 1 April 1948.**

On 1 April 1948 fire services were returned to local authority control by the Fire Services Act 1947<sup>1</sup>, which remains the main statute relating to fire authorities<sup>2</sup>, the maintenance by them of fire brigades<sup>3</sup> and related matters.

<sup>1</sup> Transitional provisions are contained in the Fire Services Act 1947 ss 11, 38(3), 39(5) (s 11 amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 10(3)). The Fire Services Act 1947 may be cited with the Fire Services Act 1951 as the Fire Services Acts 1947 and 1951 (Fire Services Act 1951 s 4(1)), and those Acts and the Fire Services Act 1959 may be cited together as the Fire Services Acts 1947 to 1959 (Fire Services Act 1959 s 14(1)). References in the Fire Services Acts 1947 to 1959 to any enactment are to be construed as references to that enactment as amended: Fire Services Act 1947 s 38(2); Fire Services Act 1951 s 4(2); Fire Services Act 1959 s 13(2). The Fire Services Acts 1947 to 1959 do not apply to Northern Ireland: Fire Services Act 1947 s 39(2); Fire Services Act 1951 s 4(4); Fire Services Act 1959 s 14(3). The Fire Services Act 1947 applies to the Isles of Scilly as if they were an administrative county and as if the Council of those Isles were the council of the county: s 37. As to the abolition of administrative counties outside Greater London and the Isles of Scilly see the Local Government Act 1972 s 1(10); and LOCAL GOVERNMENT vol 69 (2009) PARA 5; LONDON GOVERNMENT.

<sup>2</sup> For the meaning of 'fire authority' see PARA 17 post.

<sup>3</sup> See the Fire Services Act 1947 s 1(1)(a); and PARA 18 post.

## **UPDATE**

### **1-3 Fire services before 1 April 1948 ... Fire precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **2 Fire services on and after 1 April 1948**

TEXT AND NOTES--Fire Service Acts 1947 to 1957 replaced by Fire and Rescue Services Act 2004. The Secretary of State may by order make any supplementary, incidental or consequential provision, and any transitory, transitional or saving provision which he considers necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of the 2004 Act: s 53(2). See the Fire and Rescue Services Act 2004 (Consequential Amendments) (England) Order 2004, SI 2004/3168.

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### 3. Fire precautions.

Every fire authority<sup>1</sup> in Great Britain<sup>2</sup> must secure efficient arrangements for the giving, when requested, of advice in respect of buildings and other property in the authority's area as to fire prevention, restricting the spread of fires and maintaining a means of escape in case of fire<sup>3</sup>.

The Fire Precautions Act 1971<sup>4</sup>, while not of general application, relates to wide classes of premises, in the main those put to a use designated by the Secretary of State<sup>5</sup>. With certain exceptions<sup>6</sup>, such premises require fire certificates issued by the fire authorities for the areas in which they are situated<sup>7</sup>, before they may be put to their designated use<sup>8</sup>. The Act also empowers a fire authority to make a fire certificate compulsory in the case of certain premises used as dwellings<sup>9</sup>. There are special provisions for premises involving excessive risk to persons in the event of fire<sup>10</sup>.

There are various provisions governing fire precautions which apply in specific cases only and relate for example to factories, offices, shops and railway premises<sup>11</sup>, hotels and boarding houses<sup>12</sup> and certain specified premises<sup>13</sup>. There are also provisions governing fire precautions which are dealt with elsewhere in this work and relate to dwellings in multiple occupation<sup>14</sup> and certain high buildings<sup>15</sup>, to safety measures in connection with premises where raw celluloid film is used or stored<sup>16</sup>, to fire appliances to be carried on ships<sup>17</sup> and to the prevention and extinction of sparks or cinders from railway engines<sup>18</sup>.

1 For the meaning of 'fire authority' see PARA 17 post.

2 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3. The Fire Services Acts 1947 to 1959 do not apply to Northern Ireland: see PARA 2 note 1 ante.

3 Fire Services Act 1947 s 1(1)(f).

4 Except in so far as the context otherwise requires, any reference in the Fire Precautions Act 1971 to any enactment is a reference to it as amended and includes a reference to it as applied by or under any enactment including that Act: s 43(3).

5 See *ibid* s 1 (as amended); and PARA 83 post. As to the Secretary of State see PARA 10 post.

6 See *ibid* ss 1(1)-(3A), 2 (as amended); and PARA 83 post.

7 As to the discharge of fire authorities' functions see PARA 17 et seq post. Every fire authority must enforce within its area the provisions of the Fire Precautions Act 1971 and the provisions of regulations made under it, and for that purpose must appoint inspectors and cause premises to be inspected: s 18(1) (amended by the Health and Safety at Work etc Act 1974 s 78(7)). As to the duty in respect of fires at sea see PARA 62 post.

8 Fire Precautions Act 1971 s 1(1). As to penalties for breach of these provisions see PARA 83 post.

9 See *ibid* s 3; and PARA 92 post. At the date at which this volume states the law no order had been made bringing s 3 into force.

10 See *ibid* s 10 (as substituted); and PARA 24 post.

11 See *ibid* s 1(1), (2)(f) (as added); Fire Precautions (Factories, Offices, Shops and Railway Premises) Order 1989, SI 1989/76, art 4; and PARA 83 post. As to non-certificated premises see the Fire Precautions Act 1971 s 9A (as added, substituted and amended); and PARA 88 post. See also HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 660.

12 See the Fire Precautions Act 1971 s 1(1), (2)(a); the Fire Precautions (Hotels and Boarding Houses) Order 1972, SI 1972/238; and PARA 85 post.

13 See the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 4; and PARA 96 et seq post. See also HEALTH AND SAFETY AT WORK.

14 See the Housing Act 1985 ss 352, 365, 368 (all as amended); the Housing (Fire Safety in Houses in Multiple Occupation) Order 1997, SI 1997/230; and PARA 149 post.

15 See the Building Act 1984 s 72; the London Building Acts (Amendment) Act 1939 ss 33-43 (as amended), s 150 (as amended); the Fire Precautions Act 1971 s 30 (as amended); and BUILDING.

16 See the Celluloid and Cinematograph Film Act 1922 ss 1(1)(b), 2 proviso (as amended); and BUILDING.

17 See the Merchant Shipping (Fire Protection: Small Ships) Regulations 1998, SI 1998/1011 (amended by SI 1999/992; SI 1999/1957); the Merchant Shipping (Fire Protection: Large Ships) Regulations 1998, SI 1998/1012 (amended by SI 1999/992; SI 1999/1957); and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 640.

18 See the Railway Fires Act 1905 s 2; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 301.

## **UPDATE**

### **1-3 Fire services before 1 April 1948 ... Fire precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **3 Fire precautions**

TEXT AND NOTES 1-3--1947 Act replaced by Fire and Rescue Services Act 2004. A fire and rescue authority (see PARA 17) must make provision for the purpose of promoting fire safety in its area: s 6(1). In making such provision, the authority must in particular, to the extent that it considers it reasonable to do so, make arrangements for (1) the provision of information, publicity and encouragement in respect of the steps to be taken to prevent fires and death or injury by fire; (2) the giving of advice, on request, about how to prevent fires and restrict their spread in buildings and other property, and the means of escape from buildings and other property in case of fire: s 6(2). A fire and rescue authority may also enter into arrangements with another fire and rescue authority or any other person, for the discharge to any extent by that other authority or person of a function conferred on the first authority under s 6: see PARA 59.

TEXT AND NOTES 4-13--1971 Act, SI 1976/2003 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

NOTE 7--1974 Act s 78(7) repealed in part: Railways Act 2005 Sch 13 Pt 1.

NOTE 17--SI 1998/1011 further amended: SI 2003/2951, SI 2004/302, SI 2005/2114. SI 1998/1012 further amended: SI 2001/1638, SI 2003/2950, SI 2003/2951, SI 2004/302, SI 2005/2114.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(2) GENERAL LAW/(i) Liabilities of Fire Authorities, Occupiers etc/4. Fire authority's liability for negligence.

## **(2) GENERAL LAW**

### **(i) Liabilities of Fire Authorities, Occupiers etc**

#### **4. Fire authority's liability for negligence.**

A fire authority<sup>1</sup> is vicariously liable for acts of negligence committed by members of its fire brigade acting in the course of, and for the purposes of, their duties<sup>2</sup>. A fire brigade does not owe a duty of care to the owner of a building merely by virtue of attending at the fire ground and fighting the fire, but where the fire brigade, by its own actions, creates or increases the risk of the danger which causes damage, it is liable in negligence in respect of that damage, unless that damage would have occurred in any event<sup>3</sup>. A fire authority as an employer is under a duty not to expose members of the fire brigade to unnecessary risks, but a firefighter voluntarily engages himself in employment which involves more than average risks<sup>4</sup>.

1 For the meaning of 'fire authority' see PARA 17 post.

2 *Kilboy v South Eastern Fire Area Joint Committee* 1952 SC 280; *Bull v LCC* (1953) Times, 29 January; *Joyce v Metropolitan Board of Works* (1881) 44 LT 811. See also *Cope v Sharpe (No 2)* [1912] 1 KB 496, CA; *Bass v Hendon UDC* (1912) 28 TLR 317, CA. As to the liability for torts committed in the course of employment see TORT vol 97 (2010) PARA 710 et seq.

The Combined Fire Authorities (Protection from Personal Liability) (England) Regulations 1997, SI 1997/2819, and the Combined Fire Authorities (Protection from Personal Liability) (Wales) Regulations 1997, SI 1997/2818, provide for the protection from personal liability of members and officers of combined fire authorities created as a consequence of those structural changes in local government areas effected by orders under the Local Government Act 1992 s 17 and those before 1 April 1996 by virtue of the Local Government (Wales) Act 1994. As to combined fire authorities see PARA 24 et seq post.

3 *Capital and Counties plc v Hampshire County Council*; *Digital Equipment Co Ltd v Hampshire County Council*; *John Munroe (Acrylics) Ltd v London Fire and Civil Defence Authority*; *Church of Jesus Christ of Latter Day Saints (Great Britain) v West Yorkshire Fire and Civil Defence Authority* [1997] QB 1004, [1997] 2 All ER 865, CA. See, however, *Kilboy v South Eastern Fire Area Joint Committee* 1952 SC 280 at 288 obiter per Lord Keith (fireman held to be negligent in throwing down a rope which struck the plaintiff in the eye while he was watching the fire-fighting).

4 *Watt v Hertfordshire County Council* [1954] 2 All ER 368, [1954] 1 WLR 835, CA; cf *Bull v LCC* (1953) Times, 29 January.

## **UPDATE**

### **4 Fire authority's liability for negligence**

NOTE 2--Local Government Act 1992 s 17 repealed: Local Democracy, Economic Development and Construction Act 2009 Sch 7 Pt 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(2) GENERAL LAW/(i) Liabilities of Fire Authorities, Occupiers etc/5. Liability of occupier of premises for fire.

## 5. Liability of occupier of premises for fire.

The occupier of premises may be liable for damage by fire caused by his negligence<sup>1</sup>, or the negligence of an independent contractor employed by him<sup>2</sup>, and, under a rule of common law<sup>3</sup>, where he brings or keeps on his premises anything which is in itself dangerous if not kept under proper control, he is prima facie answerable for all damage which is the natural consequence of its escape<sup>4</sup>. In other cases, however, no claim may be brought against a person in whose house or other building or on whose estate any fire accidentally begins<sup>5</sup>, and in the absence of negligence<sup>6</sup> he is not liable for damage caused by outbreaks of fire on his premises<sup>7</sup>. Special statutory provision has been made for damage caused by sparks or cinders from a railway engine<sup>8</sup>, and for damage to goods at sea occasioned by fire<sup>9</sup>.

Damage properly occasioned by a fire brigade in putting out a fire is deemed to be damage by fire within the meaning of a policy of insurance against fire<sup>10</sup>.

1 *Merrington v Ironbridge Metal Works Ltd* [1952] 2 All ER 1101; and see NEGLIGENCE vol 78 (2010) PARA 29 et seq.

2 *Balfour v Barty-King* [1956] 2 All ER 555, [1956] 1 WLR 779 (affd [1957] 1 QB 496, [1957] 1 All ER 156, CA); *Sturge v Hackett* [1962] 3 All ER 166, [1962] 1 WLR 1257, CA; *H & N Emanuel Ltd v Greater London Council* [1971] 2 All ER 835, CA; and see NEGLIGENCE vol 78 (2010) PARA 35.

3 See the rule in *Rylands v Fletcher* (1868) LR 3 HL 330: see NUISANCE vol 78 (2010) PARA 148 et seq.

4 *Musgrove v Pandelis* [1919] 2 KB 43, CA (applying the rule in *Rylands v Fletcher* (1868) LR 3 HL 330 to a car with a tank filled with petrol from which an accidental fire spread owing to the lack of skill of the person in charge); *Mason v Levy Auto Parts of England Ltd* [1967] 2 QB 530, [1967] 2 All ER 62. As to the rule in *Rylands v Fletcher* supra see NUISANCE vol 78 (2010) PARA 148 et seq.

5 See the Fires Prevention (Metropolis) Act 1774 s 86 (amended by the Statute Law Revision Act 1888). No recompense is to be made by any such person for any damage suffered notwithstanding any law, usage or custom to the contrary: s 86 (as so amended). These provisions apply to the whole of England and not merely to the metropolis: *Filliter v Phippard* (1847) 11 QB 347. They do not apply to a case which falls within the rule in *Rylands v Fletcher* (1868) LR 3 HL 330: *Musgrove v Pandelis* [1919] 2 KB 43, CA. There is no burden on the defendant of disproving negligence: *Mason v Levy Auto Parts of England Ltd* [1967] 2 QB 530, [1967] 2 All ER 62.

6 The provisions of the Fires Prevention (Metropolis) Act 1774 s 86 (as amended) do not apply to a fire which was caused by negligence: *Filliter v Phippard* (1847) 11 QB 347; and see *Nicholls v Reemer* (1957) 107 LJo 378 (employer failed to take any fire precautions). If someone negligently starts a fire he is liable for any injury sustained by a fireman which is reasonably foreseeable: *Ogwo v Taylor* [1988] AC 431, [1987] 3 All ER 961, HL. See further PARA 6 post.

7 *Sochacki v Sas* [1947] 1 All ER 344 (defendant not liable for damage by fire probably caused by a spark from a fireplace which was used in the normal way); *Williams v Owen* [1956] 1 All ER 104, [1955] 1 WLR 1293 (innkeeper not liable for damage to guest's property in accidental fire not caused by negligence).

8 See the Railway Fires Act 1905; the Railway Fires Act (1905) Amendment Act 1923; and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 301.

9 See the Merchant Shipping Act 1995 s 186; and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 640; vol 43(2) (Reissue) PARAS 1493, 1989.

10 *Stanley v Western Insurance Co* (1868) LR 3 Exch 71; *Symington & Co v Union Insurance Society of Canton* (1928) 97 LJB 646, CA; and see INSURANCE vol 25 (2003 Reissue) PARA 603.

## **UPDATE**

### **5 Liability of occupier of premises for fire**

NOTE 5--Although a fire in a fire grate does not begin accidentally for the purposes of the 1774 Act s 86, a fire which has spread or escaped from such a grate onto neighbouring premises may begin accidentally: *Johnson (t/a Johnson Butchers) v BJW Property Developments Ltd* [2002] EWHC 1131 (TCC), [2002] 3 All ER 574.



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## 6. Liability to fireman injured at a fire.

Where a fireman enters premises<sup>1</sup> in the course of his duty to extinguish a fire, he does so as a visitor<sup>2</sup>. An occupier is under the common duty to take such care as is reasonable in all the circumstances not to subject the firefighter to unnecessary risk<sup>3</sup>. If a fireman is injured at a fire by reason of a breach of some statutory duty, the question whether he can recover damages will depend on whether he is a person for whose benefit the statutory provision could be made or was made<sup>4</sup>. In an action for negligence by a fireman injured at a fire the maxim *volenti non fit injuria* would only apply if the fireman fully appreciated the dangerous character of the physical condition brought about by the defendant's negligence and if he had consented to assume the risk without compensation<sup>5</sup>. Where there is no break in the chain of causation (for example the taking of unnecessary risks by the fireman), a person whose negligence started the fire can be liable in damages to the fireman<sup>6</sup>.

1 As to powers of entry see PARA 67 post.

2 *Salmon v Seafarer Restaurants Ltd (British Gas Corpn, Third Party)* [1983] 3 All ER 729, [1983] 1 WLR 1264, CA. See also *Hartley v British Railways Board* (1981) 125 Sol Jo 169.

3 *Hartley v Mayoh & Co* [1953] 2 All ER 525 (revsd on appeal on a different point [1954] 1 QB 383, [1954] 1 All ER 375, CA); *Merrington v Ironbridge Metal Works Ltd* [1952] 2 All ER 1101. It appears to make no difference whether the fire brigade is summoned by the occupier or by a stranger, or whether the firemen enter without the occupier's consent under the Fire Services Act 1947 s 30(1) (see PARA 67 post): *Merrington v Ironbridge Metal Works Ltd* supra. As to the extent of an occupier's duty of care to his visitors see the Occupiers' Liability Act 1957 s 2; and NEGLIGENCE vol 78 (2010) PARA 29 et seq.

4 *Groves v Lord Wimborne* [1898] 2 QB 402, CA; *Hartley v Mayoh & Co* [1954] 1 QB 383, [1954] 1 All ER 375, CA. An employer of a factory fire brigade is not required to provide a safe means of access under the statutory provisions relating to factories to every part of the premises where a fire may break out: *Machin v Cravens Ltd* (1958) 108 L Jo 633.

5 *Merrington v Ironbridge Metal Works Ltd* [1952] 2 All ER 1101.

6 *Ogwo v Taylor* [1988] AC 431, [1987] 3 All ER 961, HL; *Salmon v Seafarer Restaurants Ltd (British Gas Corpn, Third Party)* [1983] 3 All ER 729, [1983] 1 WLR 1264, CA.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(2) GENERAL LAW/(i) Liabilities of Fire Authorities, Occupiers etc/7. Liability for chimney fires.

## **7. Liability for chimney fires.**

If a chimney accidentally catches fire, the person occupying or using the premises on which it is situated is liable to a penalty not exceeding level 1 on the standard scale<sup>1</sup> unless he satisfies the justices before whom the case is heard that the fire was not owing to the omission, neglect or carelessness of himself or his employee<sup>2</sup>. Penalties are recoverable summarily<sup>3</sup>.

1 The 'standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37(2) (as substituted): Interpretation Act 1978 s 5, Sch 1 (amended by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58(a)). See SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 1991 s 18 (substituted by the Criminal Justice Act 1993 s 65); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

2 Town Police Clauses Act 1847 s 30 (amended by virtue of the Criminal Justice Act 1982 s 46); Public Health Act 1875 ss 2, 171 (s 2 amended by the Local Government Act 1963 s 93(1), Sch 18 Pt II). As to setting fire to property as a form of damage to property generally see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) PARA 334.

3 See the Public Health Act 1875 ss 251, 316 (s 251 amended by the Statute Law (Repeals) Act 1993).

## **UPDATE**

### **7-9 Liability for chimney fires ... Informing insurance companies of fires in London**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **7 Liability for chimney fires**

NOTE 1--1991 Act s 18, consolidated in the Powers of Criminal Courts (Sentencing) Act 2000 s 128, repealed: Criminal Justice Act 2003 Sch 37 Pt 7. See now s 162.

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## **(ii) London**

### **8. Salvage.**

A salvage force, charged with the duty of attending at fires and saving insured property, may be established by insurance companies in London other than the outer London boroughs<sup>1</sup>. It is the duty of the London Fire Brigade<sup>2</sup> with the sanction of the London Fire and Emergency Planning Authority<sup>3</sup> and subject to any regulations that may be made to afford the necessary assistance to that force in the performance of its duties and, upon the application of any of its officers, to hand over to its custody property that may be saved from fire<sup>4</sup>. No charge may be made for services so rendered by the London Fire Brigade<sup>5</sup>.

1 See the Metropolitan Fire Brigade Act 1865 s 29; and the London Government Act 1963 s 48(3) (amended by the Local Government Act 1985 s 102, Sch 17).

2 See PARA 1 note 4 ante. As to fire brigades generally see PARA 35 et seq post.

3 See the Local Government Act 1985 ss 27, 37, Sch 11 para 2(4) (s 27 repealed; s 37 amended by the Police and Magistrates Courts Act 1994 s 93, Sch 9 Pt I; Local Government Act 1985 Sch 11 para 2(4) amended by the Greater London Authority Act 1999 s 329(1), (3)); and the Greater London Authority Act 1999 s 328(1), (2), (7). See also LONDON GOVERNMENT. As to the reconstitution of the London Fire and Civil Defence Authority as the London Fire and Emergency Planning Authority see PARA 17 note 1 post.

4 Metropolitan Fire Brigade Act 1865 s 29; London Government Act 1963 s 48(3) (as amended: see note 1 supra).

5 Metropolitan Fire Brigade Act 1865 s 29.

## **UPDATE**

### **7-9 Liability for chimney fires ... Informing insurance companies of fires in London**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/1. INTRODUCTION/(2) GENERAL LAW/(ii) London/9. Informing insurance companies of fires in London.

## **9. Informing insurance companies of fires in London.**

The London Fire Brigade<sup>1</sup> must each morning, except Sunday, send information by post or otherwise to all the insurance companies contributing<sup>2</sup> to the London Fire Brigade, of all fires which have taken place within Greater London other than the outer London boroughs since such information was last supplied in such form as may be agreed between the insurance companies and the London Fire and Emergency Planning Authority<sup>3</sup>.

1 See PARA 1 note 4 ante.

2 See PARA 32 note 4 post.

3 See the Metropolitan Fire Brigade Act 1865 s 31; the London Government Act 1963 s 48(3); the Local Government Act 1985 ss 27, 37, Sch 11 para 2(4) (s 27 repealed; s 37 amended by the Police and Magistrates Courts Act 1994 s 93, Sch 9 Pt I; Local Government Act 1985 Sch 11 para 2(4) amended by the Greater London Authority Act 1999 s 329(1), (3)); and the Greater London Authority Act 1999 s 328(1), (2), (7).

### **UPDATE**

#### **7-9 Liability for chimney fires ... Informing insurance companies of fires in London**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(1) CENTRAL ADMINISTRATION/(i) The Secretary of State and the Fire Service Inspectorate/10. The Secretary of State.

## **2. FIRE SERVICE ADMINISTRATION**

### **(1) CENTRAL ADMINISTRATION**

#### **(i) The Secretary of State and the Fire Service Inspectorate**

##### **10. The Secretary of State.**

A number of powers are given to the Secretary of State<sup>1</sup> under the Fire Services Act 1947 and the Fire Precautions Act 1971<sup>2</sup>, and generally these are the responsibility of the Secretary of State for the Home Department<sup>3</sup>. Some functions which were originally conferred on the Minister of Health or the Minister of Transport have been transferred to the Secretary of State<sup>4</sup>. Some functions, so far as they are exercisable in relation to Wales, have been transferred to the National Assembly for Wales<sup>5</sup>.

The Secretary of State's power to make regulations<sup>6</sup> and certain orders<sup>7</sup> is exercisable by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament<sup>8</sup>.

1 In any enactment, 'Secretary of State' means one of Her Majesty's principal secretaries of state: see the Interpretation Act 1978 s 5, Sch 1. As to the office of Secretary of State see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355.

2 As to these powers see PARAS 11-15, 83 et seq post.

3 As to the Home Secretary see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 466.

4 See eg the Fire Services Act 1947 s 3(2) (as amended); and PARA 23 post.

5 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 (as amended). For an example see the Fire Services Act 1947 s 3(5) (as amended); and PARA 30 post.

6 See under the Fire Services Act 1947 or the Fire Precautions Act 1971.

7 See under the Fire Services Act 1947 s 11 (as amended) (adaptation of local Acts: see PARA 2 ante) or s 26 (as amended) (pension schemes: see PARA 45 post) or the Fire Precautions Act 1971 s 1 (as amended) (see PARA 83 post).

8 See the Fire Services Act 1947 s 35(1), (2); and the Fire Precautions Act 1971 ss 1(7), 37(1). For the purposes of the Fire Services Act 1947, if either House of Parliament within a period of 40 days resolves that the regulations or order be annulled, no further proceedings are to be taken in respect of the regulations or order, and Her Majesty may revoke them, so, however, that any such resolution and revocation is without prejudice to the validity of anything previously done under the regulations or order or to the making of new regulations or a new order: see s 35(2). In reckoning any such period of 40 days, no account is to be taken of any time during which Parliament is dissolved or prorogued, or during which both Houses are adjourned for more than four days: see s 35(3). As to the procedure for laying statutory instruments before Parliament see the Statutory Instruments Act 1946 s 4 (as amended), ss 5-7; and PARLIAMENT vol 34 (Reissue) PARA 941 et seq.

## **UPDATE**

### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **10 The Secretary of State**

TEXT AND NOTES--The Secretary of State and, in relation to Wales, the National Assembly for Wales, is required to prepare a Fire and Rescue National Framework, setting out priorities and objectives for fire and rescue authorities: see Fire and Rescue Services Act 2004 s 21; and PARA 10A.

TEXT AND NOTES 1, 2--Further powers are given to the Secretary of State under the Fire Services Act 2003 (see s 3(5)) to set or modify the conditions of service of employees of a fire and rescue authority (see s 1(1)(a); and PARA 38).

TEXT AND NOTE 2--1971 Act replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

TEXT AND NOTES 6-8--1947 Act replaced by the 2004 Act. Regulations or an order made by the Secretary of State or the National Assembly for Wales under the 2004 Act must be made by statutory instrument, and may make different provision for different purposes, including different provision for different areas, different authorities and different descriptions of authorities, and may include incidental, supplemental, consequential, saving or transitional provision: s 60(1)-(3). A statutory instrument made by the Secretary of State containing (alone or with other provisions) subordinate legislation which amends or repeals any Act or provision of an Act may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament: ss 60(4), 62(3). Such a statutory instrument containing any other subordinate legislation, apart from an order under s 30 or 61, is subject to annulment in pursuance of a resolution of either House of Parliament: ss 60(5), 62(3).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(1) CENTRAL ADMINISTRATION/(i) The Secretary of State and the Fire Service Inspectorate/10A. Fire and Rescue National Framework.

### **10A. Fire and Rescue National Framework.**

The Secretary of State<sup>1</sup> must prepare a Fire and Rescue National Framework<sup>2</sup>, to which fire and rescue authorities must have regard in carrying out their functions<sup>3</sup>. The framework must set out priorities and objectives for fire and rescue authorities in connection with the discharge of their functions<sup>4</sup>, may contain guidance to fire and rescue authorities in connection with the discharge of any of their functions<sup>5</sup>, and may contain any other matter relating to fire and rescue authorities or their functions that the Secretary of State considers appropriate<sup>6</sup>. In preparing the framework, or any revisions to the framework which appear to him to be significant, the Secretary of State must consult fire and rescue authorities or persons considered by him to represent them<sup>7</sup>, must consult persons considered by him to represent employees of fire and rescue authorities<sup>8</sup>, and may consult any other persons he considers appropriate<sup>9</sup>.

If the Secretary of State considers that a fire and rescue authority is failing, or is likely to fail, to act in accordance with the framework, he may by order require the authority to do something, to stop doing something, or not to do something for the purpose of securing that the authority acts in accordance with the framework<sup>10</sup>. The Secretary of State may make such an order only if he considers that making the order would promote (1) public safety<sup>11</sup>; (2) the economy, efficiency and effectiveness of the in respect of which the order is made<sup>12</sup>; or (3) economy, efficiency and effectiveness in connection with the matters in relation to which fire and rescue authorities have functions<sup>13</sup>. Before making such an order, the Secretary of State must give the authority an opportunity to make representations about the order proposed<sup>14</sup>.

The Secretary of State must prepare, and may revise, a protocol about the exercise of his power to make an order requiring a fire and rescue authority to do something, to stop doing something, or not to do something<sup>15</sup>, and must have regard to the protocol in exercising that power<sup>16</sup>. The protocol must in particular make provision about persons or descriptions of persons that the Secretary of State will consult before exercising that power<sup>17</sup>. In preparing the protocol, or any revisions to it which appear to him to be significant, the Secretary of State must consult fire and rescue authorities or persons considered by him to represent them<sup>18</sup>, must consult persons considered by him to represent employees of fire and rescue authorities<sup>19</sup>, and may consult any other persons he considers appropriate<sup>20</sup>.

The Audit Commission<sup>21</sup> may carry out best value inspections<sup>22</sup> of a fire and rescue authority's compliance with the requirement for it to have regard to the framework in carrying out its functions<sup>23</sup>.

The Secretary of State must report to Parliament and the National Assembly for Wales must publish a report on the extent to which fire and rescue authorities are acting in accordance with the framework, and any steps taken by him for the purpose of securing that authorities act in accordance with the framework<sup>24</sup>.

1 In relation to Wales, references to the Secretary of State are substituted with a reference to the National Assembly for Wales: Fire and Rescue Services Act 2004 s 62(1).

2 Ibid s 21(1). The Secretary of State must keep the terms of the framework under review and may from time to time make revisions to it: s 21(3). The Secretary of State must discharge his functions under s 21(1), (3) in the manner and to the extent that appear to him to be best calculated to promote (1) public safety; (2) the economy, efficiency and effectiveness of fire and rescue authorities; and (3) economy, efficiency and effectiveness in connection with the matters in relation to which fire and rescue authorities have functions: s

21(4). The framework as first prepared, and any revisions to the framework which appear to the Secretary of State to be significant, have effect only when brought into effect by the Secretary of State by order: s 21(6). See the Fire and Rescue Services (National Framework) (England) Order 2006, SI 2006/1084; the Fire and Rescue Services (National Framework) (Wales) Order 2005, SI 2005/760 (amended by SI 2007/1075); the Fire and Rescue Services (National Framework) (England) Order 2008, SI 2008/1370; and the Fire and Rescue Services (National Framework) (Wales) Order 2008, SI 2008/2298.

3 2004 Act s 21(7).

4 Ibid s 21(2)(a).

5 Ibid s 21(2)(b).

6 Ibid s 21(2)(c).

7 Ibid s 21(5)(a).

8 Ibid s 21(5)(b).

9 Ibid s 21(5)(c).

10 Ibid s 22(1), (2).

11 Ibid s 22(3)(a).

12 Ibid s 22(3)(b).

13 Ibid s 22(3)(c).

14 Ibid s 22(4).

15 Ie an order under ibid s 22(2): s 23(1).

16 Ibid s 23(3). The Secretary of State must publish the protocol for the time being in force in the manner he considers appropriate: s 23(5).

17 Ibid s 23(2).

18 Ibid s 23(4)(a).

19 Ibid s 23(4)(b).

20 Ibid s 23(4)(c).

21 As to the Audit Commission see LOCAL GOVERNMENT vol 69 (2009) PARA 744 et seq.

22 Ie inspections of a best value authority's compliance with the requirements of the Local Government Act 1999 ss 10-13 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 699-702). In relation to the Audit Commission's duty to issue a report, a report may recommend that the Secretary of State make an order under the 2004 Act s 22: see s 21(2).

23 Ie the authority's compliance with ibid s 21(7): s 24(1).

24 Ibid ss 25(1), 62(2). The first report under s 25(1) must be made before the end of the period of two years starting on the date when the framework as first prepared is brought into effect, and every subsequent report must be made before the end of the period of two years starting on the date on which the last such report was made: s 25(2).

## **UPDATE**

### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.





Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(1) CENTRAL ADMINISTRATION/(i) The Secretary of State and the Fire Service Inspectorate/11. Fire service inspectorate.

## **11. Fire service inspectorate.**

Inspectors may be appointed by Her Majesty and assistant inspectors and other officers may be appointed by the Secretary of State<sup>1</sup> for the purpose of obtaining information as to the manner in which fire authorities perform their statutory functions<sup>2</sup>, and as to technical matters relating to them<sup>3</sup>. Both inspectors and assistant inspectors<sup>4</sup> have certain special powers and functions in relation to fire precautions matters<sup>5</sup>. Persons so appointed may be paid by the Secretary of State such remuneration as he may with the approval of the Treasury determine<sup>6</sup>.

1 As to the Secretary of State see PARA 10 ante.

2 Ie under the Fire Services Act 1947, the Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended) (see note 3 infra; and PARA 12 et seq post).

3 See the Fire Services Act 1947 s 24(1); the Fire Precautions Act 1971 s 29; and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 10(6).

4 An inspector or assistant inspector appointed under the Fire Services Act 1947 s 24(1) is a fire inspector for the purposes of the Fire Precautions Act 1971: see PARA 141 post.

5 As to a fire inspector's functions see PARAS 140-141 post.

6 Fire Services Act 1947 s 24(2); Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, art 2(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

## **UPDATE**

### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **11 Fire service inspectorate**

TEXT AND NOTES--1947 Act replaced by the Fire and Rescue Services Act 2004.

Inspectors may be appointed by Her Majesty by Order in Council and assistant inspectors and other officers may be appointed by the Secretary of State or, in relation to Wales, the National Assembly for Wales for the purpose of obtaining information as to the manner in which fire and rescue authorities are discharging their functions, and as to technical matters relating to those functions: s 28(1). The Secretary of State or, as the case may be, the Assembly may pay to persons appointed under s 28 remuneration determined by him: s 28(2). A person appointed under the 1947 Act s 24 is to be taken to have been appointed under s 28: s 28(3).

NOTES 2-4--1971 Act replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

NOTES 2, 3--1997/1840 replaced: SI 2005/1541 (see NOTES 2-4).



Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(1) CENTRAL ADMINISTRATION/(i) The Secretary of State and the Fire Service Inspectorate/12. Central Fire Brigades Advisory Council.

## **12. Central Fire Brigades Advisory Council.**

The Central Fire Brigades Advisory Council is a council constituted by the Secretary of State<sup>1</sup> for the purpose of advising him on matters on which he is required by the Fire Services Act 1947 to consult the Council, or any other matter arising<sup>2</sup> in connection with the operation of the Act which the Council has taken into consideration, whether on a reference from the Secretary of State or otherwise<sup>3</sup>.

The Council consists of a chairman, appointed by the Secretary of State, and of such number of other persons so appointed as the Secretary of State may determine, being persons appointed as representing the interests of fire authorities and of persons employed as members of fire brigades maintained in pursuance of the Act<sup>4</sup>. The Secretary of State may also, if he thinks fit, appoint other persons appearing to him to have special qualifications as members of the Council, either generally or for consideration of any particular matter<sup>5</sup>.

The Council determines its own procedure, including the quorum, subject to any directions of the Secretary of State<sup>6</sup>. Any expenses incurred by the Council and authorised by the Secretary of State may be defrayed by him with the consent of the Treasury<sup>7</sup>.

1 As to the Secretary of State see PARA 10 ante.

2 Ie otherwise than under the Fire Services Act 1947 s 17 (as amended): see PARA 39 post.

3 Ibid s 29(1). See eg paras 37-38, 45, 76 post.

4 Ibid s 29(2). For the meaning of 'fire authority' see PARA 17 post. As to fire brigades see PARA 35 et seq post.

5 Ibid s 29(3).

6 Ibid s 29(4).

7 Ibid s 29(5); Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, art 2(2). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

## **UPDATE**

### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **12 Central Fire Brigades Advisory Council**

TEXT AND NOTES--Repealed: Fire and Rescue Services Act 2004 Sch 1 para 30, Sch 2. Central Fire Brigades Advisory Council abolished: s 51.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(1) CENTRAL ADMINISTRATION/(ii) Training and Equipment/13. Training centres.

## **(ii) Training and Equipment**

### **13. Training centres.**

The Secretary of State<sup>1</sup> may establish and maintain a central training institution and one or more local training centres for providing courses of instruction in matters relating to fire services<sup>2</sup>. A trading fund has been established for the operations of the Fire Service College<sup>3</sup> and the Secretary of State is the source of issues to the fund by way of loan<sup>4</sup>.

1 As to the Secretary of State see PARA 10 ante.

2 Fire Services Act 1947 s 23(1). A fire service staff college has been established at Moreton-in-Marsh in pursuance of this power. Where a member of a fire brigade maintained by a fire authority, with the authority's consent, becomes employed as a temporary instructor at the central training institution or at any training centre maintained by the Secretary of State or a fire authority, he is deemed to be employed as a member of that brigade for all purposes other than the purposes of the Firemen's Pension Scheme; and, if his employment is at a training centre maintained by a fire authority, also for the purposes of the scheme: Fire Services Act 1959 s 10. For the meaning of 'fire authority' see PARA 17 post. As to fire brigades see PARA 35 et seq post. As to the power of fire authorities to establish training centres see PARA 18 post. As to the Firemen's Pension Scheme see PARA 45 et seq post.

3 See the Fire Service College Trading Fund Order 1992, SI 1992/640, art 2.

4 See ibid art 3. There are also provisions in respect of the fund's assets and liabilities and in relation to public dividend capital (see art 4) and limiting the fund's indebtedness (see art 5).

## **UPDATE**

### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **13 Training centres**

TEXT AND NOTES 1, 2--1947 and 1959 Acts replaced by the Fire and Rescue Services Act 2004.

The Secretary of State or, in relation to Wales, the National Assembly for Wales may establish and maintain a central training institution and one or more local training centres for one or more of the following purposes: (1) the provision of education and training to employees of fire and rescue authorities; (2) the provision of advice and assistance to fire and rescue authorities in connection with the provision of such education and training; (3) the supervision and regulation of the provision of such education and training; (4) the provision of education and training to persons who provide, or are to provide, such education and training; (5) the provision of education and training, in the United Kingdom or elsewhere, to persons who are not employees of fire and rescue authorities in matters in relation to which fire and rescue authorities have functions; (6) the provision of advice and assistance, in the United Kingdom or

elsewhere, in connection with the provision of such education and training: s 31. The Secretary of State or, as the case may be, the Assembly, may make any payments he considers appropriate in respect of the expenses of a body established for the purpose of advising him on any matter in relation to which provision is made by the 2004 Act: s 50(1). The Secretary of State or, as the case may be, the Assembly, may make a payment under this s 50 to any person he considers appropriate, and subject to any conditions he considers appropriate: s 50(2).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(1) CENTRAL ADMINISTRATION/(ii) Training and Equipment/14. Provision of equipment.

#### **14. Provision of equipment.**

In accordance with arrangements approved by the Treasury<sup>1</sup>, the Secretary of State<sup>2</sup> may provide, for purchase by any fire authority<sup>3</sup> desiring to avail itself of the arrangements, equipment<sup>4</sup> for the discharge of its functions under the Fire Services Act 1947<sup>5</sup>.

1 As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

2 As to the Secretary of State see PARA 10 ante.

3 For the meaning of 'fire authority' see PARA 17 post.

4 For the meaning of 'equipment' see PARA 18 note 3 post. As to equipment and fittings of fire engines see PARA 71 post. As to regulations relating to the design and performance of equipment see PARA 37 post.

5 Fire Services Act 1947 s 22; Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, art 2(2). This power is rarely exercised, and the Secretary of State does not act as a central purchasing agency. As to the functions of fire authorities see PARA 17 et seq post.

#### **UPDATE**

#### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

#### **14 Provision of equipment**

TEXT AND NOTES--1947 Act replaced by the Fire and Rescue Services Act 2004.

The Secretary of State or, in relation to Wales, the National Assembly for Wales may provide and maintain, or contribute to the provision and maintenance of, any equipment, facilities and services he considers appropriate for promoting the economy, efficiency and effectiveness of fire and rescue authorities: s 29(1). The Secretary of State and the Assembly may establish and maintain, or contribute to the establishment and maintenance of, any organisations he considers appropriate for promoting the economy, efficiency and effectiveness of fire and rescue authorities: s 29(2). Charges may be imposed for the use of equipment, facilities and services provided by the Secretary of State or the Assembly under s 29(1), or by an organisation established or maintained by him: s 29(3). The Secretary of State and the Assembly may by order make provision requiring one or more fire and rescue authorities (1) to use and maintain equipment and facilities specified in the order or of a description specified in the order; (2) to use services specified in the order or of a description specified in the order: s 29(4). Before making such an order, the Secretary of State or the Assembly must consult any persons he considers appropriate: s 29(5). As to orders made under the 2004 Act see PARA 10.

The Secretary of State and the Assembly may, if he considers it necessary for the purposes of public safety, by order give general or specific directions to one or more

fire and rescue authorities about the use or disposal of property or facilities: s 30(1). The provision that may be contained in such a direction given to an authority includes (a) provision about the use or disposal by the authority of property or facilities belonging to or under the control of the authority; (b) provision about the use by the authority of property or facilities belonging to or under the control of another fire and rescue authority or a person who has made the property or facilities available, or is willing to do so; (c) provision requiring payments to be made by the authority to another fire and rescue authority or to any other person, in respect of the use of property or facilities: s 30(2). The references to property or facilities belonging to a person include land occupied by the person: s 30(3). Before making an order under s 30 the Secretary of State or, as the case may be, the Assembly must consult any persons he considers appropriate: s 30(4).



Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(1) CENTRAL ADMINISTRATION/(iii) Public Local Inquiries/15. Public local inquiries.

### **(iii) Public Local Inquiries**

#### **15. Public local inquiries.**

The Secretary of State<sup>1</sup> may hold a public local inquiry into the manner in which any fire authority<sup>2</sup> is performing its functions<sup>3</sup> or into the circumstances of, or the steps taken to deal with, any particular outbreak of fire<sup>4</sup>. He also has certain powers or duties to hold inquiries in relation to combination schemes<sup>5</sup>, agency arrangements<sup>6</sup>, reinforcement schemes<sup>7</sup>, and establishment schemes<sup>8</sup>. The provisions of the Local Government Act 1972<sup>9</sup> relating to evidence at local inquiries and to the making of orders as to the payment of costs incurred there by local authorities, apply to any inquiry held in pursuance of the Fire Services Act 1947<sup>10</sup>.

1 As to the Secretary of State see PARA 10 ante.

2 For the meaning of 'fire authority' see PARA 17 post.

3 He under the Fire Services Act 1947, the Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended) (see PARA 131 et seq post).

4 Fire Services Act 1947 s 33(1); Fire Precautions Act 1971 s 29; Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 10(6). The Secretary of State must give reasons for his decision, if requested: see the Tribunals and Inquiries Act 1992 s 10; and JUDICIAL REVIEW vol 61 (2010) PARA 646.

5 See PARA 24 post. As to combination schemes see PARA 24 et seq post.

6 See PARA 28 post.

7 See PARA 29 post.

8 See PARA 36 post.

9 See the Local Government Act 1972 s 250(2), (3), (5) (s 250(3) as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 105.

10 Fire Services Act 1947 s 33(2); Interpretation Act 1978 s 17(2)(a).

#### **UPDATE**

#### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

#### **15 Public local inquiries**

TEXT AND NOTES--1947 Act replaced by the Fire and Rescue Services Act 2004.

A fire and rescue authority must submit to the Secretary of State or the Assembly any reports and returns required by him, and give the Secretary of State or the Assembly

any information with respect to its functions required by him: s 26. As to the holding of inquiries generally see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 15A.

NOTES 3, 4--1971 Act, SI 1997/1840 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(1) CENTRAL ADMINISTRATION/(iv) Central Expenditure/16. Expenditure of the Secretary of State.

#### **(iv) Central Expenditure**

##### **16. Expenditure of the Secretary of State.**

All expenses incurred by the Secretary of State<sup>1</sup> by virtue of the Fire Services Act 1947 are defrayed out of moneys provided by Parliament<sup>2</sup> and any receipts of the Secretary of State under the Act are paid into the Exchequer<sup>3</sup>. Any expenditure incurred by the Secretary of State under or by virtue of the Fire Precautions Act 1971 is also paid out of moneys provided by Parliament<sup>4</sup>.

1 As to the Secretary of State see PARA 10 ante.

2 Fire Services Act 1947 s 34(1).

3 Ibid s 34(2).

4 Fire Precautions Act 1971 s 39. Any increase attributable to any provision of that Act in the sums payable under any other enactment is also paid out of moneys so provided: s 39.

#### **UPDATE**

##### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

##### **16 Expenditure of the Secretary of State**

TEXT AND NOTES 1-3--1947 Act replaced by the Fire and Rescue Services Act 2004.

There must be paid out of money provided by Parliament any expenditure incurred by the Secretary of State in consequence of the 2004 Act and any increase attributable to the 2004 Act in the sums payable out of money provided by Parliament under another enactment: s 59.

TEXT AND NOTE 4--1971 Act replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(2) LOCAL ADMINISTRATION/(i) Fire Authorities and their Functions/17. Fire authorities.

## **(2) LOCAL ADMINISTRATION**

### **(i) Fire Authorities and their Functions**

#### **17. Fire authorities.**

The London Fire and Emergency Planning Authority<sup>1</sup> is the fire authority<sup>2</sup> for Greater London<sup>3</sup>. The fire and civil defence authority established<sup>4</sup> for each metropolitan county is the fire authority for that county<sup>5</sup> and the council of every non-metropolitan county or, in Wales, of every county or county borough is the fire authority for the area of the council<sup>6</sup> except where a combined fire authority has been constituted by a combination scheme<sup>7</sup>. A fire authority constituted by a combination scheme consists of such representatives of each of the constituent areas as may be prescribed by the scheme<sup>8</sup>. It is a body corporate with a common seal bearing such name as may be prescribed by the scheme<sup>9</sup>.

1 On 3 July 2000 the body corporate established by the Local Government Act 1985 s 27 (now repealed) and referred to as the London Fire and Civil Defence Authority was reconstituted as the London Fire and Emergency Planning Authority: see the Local Government Act 1985 s 27 (repealed); and the Greater London Authority Act 1999 s 328(1), (2), (4), Sch 28.

2 For the purposes of the Fire Services Act 1947, 'fire authority' means an authority which for the time being is constituted a fire authority by that Act or any combination scheme made under it: s 38(1). For the purposes of the Fire Services Act 1959, 'fire authority' has the same meaning as in the Fire Services Act 1947: see the Fire Services Act 1959 s 13. For the purposes of the Fire Precautions Act 1971, 'fire authority', in relation to any premises or proposed premises, means the authority discharging the functions of fire authority under the Fire Services Act 1947 in the area in which the premises are or are to be situated: Fire Precautions Act 1971 s 43(1).

3 Local Government Act 1985 ss 27, 37, Sch 11 para 2(1) (s 27 repealed; s 37 amended by the Police and Magistrates Courts Act 1994 s 93, Sch 9 Pt I; Local Government Act 1985 Sch 11 para 2(1) amended by the Greater London Authority Act 1999 s 329(1), (2)); Greater London Authority Act 1999 s 328(1), (2).

4 It is established under the Local Government Act 1985 Pt IV (ss 23-42) (as amended): Sch 11 para 2(1) (as amended: see note 3 supra).

5 Ibid Sch 11 para 2(1) (as amended: see note 3 supra). The fire and civil defence authority established for each metropolitan county is a body corporate: see s 26(1). See also LOCAL GOVERNMENT vol 69 (2009) PARA 48.

6 Fire Services Act 1947 s 4 (amended by the Local Government Act 1972 s 272(1); the Local Government Act 1985 Sch 11 para 2(3); and the Local Government (Wales) Act 1994 s 23(1)). Nothing in the Fire Services Act 1947 s 4 (as amended) affects any functions relating to fire prevention, restricting the spread of fires, or means of escape in case of fire, being functions conferred on a council otherwise than as an authority maintaining a fire brigade: see s 4 (as so amended).

7 As to combination schemes see PARA 24 et seq post. As to the functions of fire authorities see PARA 18 et seq post.

8 Fire Services Act 1947 s 8(1). Meetings of a fire authority which is, as well as one which is not, constituted by a combination scheme are open to the public, and documents relating to such meetings are open to inspection by the public, in accordance with the provisions of the Local Government Act 1972 Pt VA (ss 100A-100K) (as added and amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 661 et seq): Fire Services Act 1947 s 8(3A) (added by the Local Government (Access to Information) Act 1985 s 3, Sch 2 para 1).

9 Fire Services Act 1947 s 8(1). In so far as this provision confers power to hold land without licence in mortmain, it has been rendered otiose by the repeal of the law of mortmain: see the Charities Act 1960 s 38 (as amended); and CHARITIES vol 8 (2010) PARAS 82-83.

## UPDATE

### 10-34 Fire Service Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### 17 Fire [and rescue] authorities

TEXT AND NOTES--Replaced<sup>1</sup>.

Except where a combined fire authority has been constituted by a combination scheme<sup>2</sup>, the fire and rescue authority for an area is determined as follows<sup>3</sup>: (1) in England (a) a non-metropolitan county council is the fire and rescue authority for the county<sup>4</sup>; (b) a non-metropolitan district council for an area for which there is no county council is the fire and rescue authority for the area<sup>5</sup>; (c) the London Fire and Emergency Planning Authority is the fire and rescue authority for Greater London<sup>6</sup>; (d) a metropolitan county fire and rescue authority is the fire and rescue authority for the county<sup>7</sup>; and (e) the Council of the Isles of Scilly is the fire and rescue authority for the Isles of Scilly<sup>8</sup>; (2) in Wales (a) a county council is the fire and rescue authority for the county<sup>9</sup>; and (b) a county borough council is the fire and rescue authority for the county borough<sup>10</sup>.

- 1 1947 and 1959 Acts replaced by the Fire and Rescue Services Act 2004.
- 2 Ie under ibid ss 2 and 4 (see PARA 24-26): s 1(4).
- 3 Ibid s 1(1).
- 4 Ibid s 1(2)(a).
- 5 Ibid s 1(2)(b).
- 6 Ibid s 1(2)(c).
- 7 Ibid s 1(2)(d) (amended by the Civil Contingencies Act 2004 Sch 2 para 10(2)).
- 8 Fire and Rescue Services Act 2004 s 1(1), (2)(e).
- 9 Ibid s 1(3)(a).
- 10 Ibid s 1(3)(b).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(2) LOCAL ADMINISTRATION/(i) Fire Authorities and their Functions/18. Provision of fire brigade.

## **18. Provision of fire brigade.**

Every fire authority<sup>1</sup> must secure the services for its area of such a fire brigade<sup>2</sup> and such equipment<sup>3</sup> as may be necessary to meet efficiently all normal requirements<sup>4</sup>. A fire authority must also arrange for the efficient training of the members of the fire brigade<sup>5</sup>, and may establish and maintain training centres for providing courses of instruction for members of its own or other brigades and for training persons for service in fire brigades<sup>6</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 As to fire brigades see PARA 35 et seq post.

3 'Equipment' includes fire engines and other vehicles and appliances and other apparatus, and also uniforms and badges of rank: Fire Services Act 1947 s 38(1).

4 Ibid s 1(1)(a). 'Normal requirements' are not defined in the Fire Services Act 1947. It is thought that the reference to normal requirements does not imply that a fire brigade has no obligations in respect of abnormal fires. In considering, however, the action to be taken in relation to a fire, regard must be had to all the factors, in particular, for example, the likelihood of other calls on the brigade, the danger to life and property and the value of the property concerned. Thus in certain circumstances, for example a fire in a refuse dump, it might be best to allow the fire to burn itself out.

5 See ibid s 1(1)(b). As to regulations relating to standards of training and equipment see PARA 37 post.

6 Ibid s 23(3). The Secretary of State may also establish and maintain training centres: see s 23(1); and PARA 13 ante. As to the Secretary of State see PARA 10 ante. As to employment as a temporary instructor see the Fire Services Act 1959 s 10; and PARA 13 note 2 ante.

## **UPDATE**

### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **18 Provision of fire brigade**

TEXT AND NOTES--Replaced. In making provision for the purpose of extinguishing fires and protecting life and property in the event of fires in its area, a fire and rescue authority (see PARA 17) must in particular secure the provision of the personnel, services and equipment necessary efficiently to meet all normal requirements, and secure the provision of training for personnel: Fire and Rescue Services Act 2004 s 7(2) (a), (b). A fire and rescue authority may establish and maintain one or more training centres for providing education and training in matters in relation to which fire and rescue authorities have functions: s 18.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(2) LOCAL ADMINISTRATION/(i) Fire Authorities and their Functions/19. Civil defence functions.

## **19. Civil defence functions.**

It is the function of the relevant fire and civil defence authority<sup>1</sup>:

- 1 (1) to carry out on behalf of any council in its area civil defence functions in accordance with any arrangement entered into by that council<sup>2</sup>;
- 2 (2) at the request of the designated Minister<sup>3</sup>, or of any council in its area with civil defence functions<sup>4</sup>, to assist any such council in<sup>5</sup>:
  - 1 1. (a) the making and revising of plans for its area<sup>6</sup> and the carrying out of exercises based on such plans<sup>7</sup>;
  - 2 2. (b) the taking of preparatory steps to ensure that such plans can be carried out<sup>8</sup>;
  - 3 3. (c) the carrying out of those plans<sup>9</sup>; and
  - 4 4. (d) the training of staff<sup>10</sup>.

1 Civil Defence (General Local Authority Functions) Regulations 1993, SI 1993/1812, reg 7. For these purposes, 'the relevant fire and civil defence authority', in relation to a metropolitan district council, means the metropolitan county fire and civil defence authority for the area in which the area of the district council is situated and, in relation to the council of a London borough or the City of London, means the London Fire and Emergency Planning Authority: reg 6(4) (amended by virtue of the Greater London Authority Act 1999 s 328(7)). See also WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 550 et seq. As to the London Fire and Emergency Planning Authority see PARA 17 ante.

2 Civil Defence (General Local Authority Functions) Regulations 1993, SI 1993/1812, reg 7(a). The reference in the text to an arrangement is to one entered into by a council under reg 6(3): see reg 7(a).

3 As to the designated Minister see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARA 541.

4 Ie under the Civil Defence (General Local Authority Functions) Regulations 1993, SI 1993/1812 (as amended).

5 Ibid reg 7(b).

6 Ie under ibid reg 6(1)(a)(i): see reg 7(b).

7 Ibid reg 7(b)(i).

8 Ibid reg 7(b)(ii).

9 Ibid reg 7(b)(iii).

10 Ibid reg 7(b)(iii). The reference in the text to the training of staff is to such training under reg 6(1)(b): see reg 7(b)(iii).

## **UPDATE**

### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **19 Civil defence functions**

NOTE 1--For 'metropolitan county fire and civil defence authority' read 'metropolitan country fire and rescue authority': Civil Contingencies Act 2004 Sch 2 Pt 1 para 10(2).



Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(2) LOCAL ADMINISTRATION/(i) Fire Authorities and their Functions/20. Employment of fire brigade.

## **20. Employment of fire brigade.**

The powers of a fire authority<sup>1</sup> include power to employ the fire brigade maintained by it, or use any equipment so maintained, outside its area<sup>2</sup>. The powers of a fire authority also include power to employ the fire brigade maintained by it or use any equipment so maintained, for purposes other than fire-fighting purposes<sup>3</sup> for which it appears to the authority to be suitable, and, if it thinks fit, to make such charge as it may determine for any services rendered in the course of such employment or use<sup>4</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 Fire Services Act 1947 s 3(1)(d). For the meaning of 'equipment' see PARA 18 note 3 ante. As to fire brigades see PARA 35 et seq post. As to fires at sea see PARA 62 post.

3 For the meaning of 'fire-fighting purposes' see PARA 59 post. 'Purposes other than fire-fighting purposes' is intended to cover: (1) rescue services, such as rescuing people or animals trapped in trees or railings or under vehicles, or pumping out flooded basements; (2) arrangements by which the fire brigade carries out or assists in carrying out the local authority's duties under another Act, eg the Celluloid and Cinematograph Film Act 1922 (see BUILDING) or the Explosives Act 1875 (see EXPLOSIVES vol 17(2) (Reissue) PARA 922). While there is no limit laid down in the Fire Services Act 1947 as to the special services which may be rendered by the fire brigade, it is submitted that some limitation must be implied and that, for instance, fire brigade repair garages should not undertake commercial work nor should fire authorities compete with commercial firms in manufacturing or installing fire escapes or fire extinguishers for private premises. Since a charge can be made for these special services, but not for fire-fighting purposes, it is important to decide into which category a particular service falls. Fire prevention services, such as the repair of hoses or the inspection of fire extinguishers do not appear to fall within s 1(1)(f) (advice as to fire precautions: see PARA 3 ante) but it is a common practice for fire authorities to make a charge for such services.

4 Ibid s 3(1)(e). Under former legislation the expense incurred in extinguishing fire outside the area of an authority fell, as between landlord and tenant from year to year, on the landlord by reason of the definition of 'owner' in that legislation: see *Sale v Phillips* [1894] 1 QB 349, DC.

## **UPDATE**

### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **20 Employment of fire brigade**

TEXT AND NOTES--Repealed: Fire and Rescue Services Act 2004 Sch 2. As to fire and rescue authorities' powers to make charges see PARA 32.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(2) LOCAL ADMINISTRATION/(i) Fire Authorities and their Functions/21. Accommodation.

## **21. Accommodation.**

The powers of a fire authority<sup>1</sup> include power to provide accommodation for the fire brigade<sup>2</sup> for its area and its equipment<sup>3</sup>, including housing and other accommodation for members of the brigade and furniture reasonably required for such accommodation<sup>4</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 As to fire brigades see PARA 35 et seq post.

3 For the meaning of 'equipment' see PARA 18 note 3 ante.

4 Fire Services Act 1947 s 3(1)(a). It is no longer usual for a fire authority to provide residential accommodation for firemen.

### **UPDATE**

#### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

#### **21 Accommodation**

TEXT AND NOTES--Repealed: Fire and Rescue Services Act 2004 Sch 2.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(2) LOCAL ADMINISTRATION/(i) Fire Authorities and their Functions/22. Rewards.

## **22. Rewards.**

The powers of a fire authority<sup>1</sup> include power to pay to persons, not being members of a fire brigade<sup>2</sup>, who render services for fire-fighting purposes<sup>3</sup>, such rewards as the authority thinks fit<sup>4</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 I.e. a fire brigade maintained in pursuance of the Fire Services Act 1947. As to fire brigades see PARA 35 et seq post.

3 For the meaning of 'fire-fighting purposes' see PARA 59 post.

4 Fire Services Act 1947 s 3(1)(b). Thus rewards may be paid to members of private fire brigades (eg factory brigades) if they are not also members of a brigade maintained by a fire authority. In practice members of factory brigades are frequently enrolled as part-time members of the brigades maintained by the appropriate fire authority.

## **UPDATE**

### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **22 Rewards**

TEXT AND NOTES--Replaced. A fire and rescue authority may enter into arrangements with a person, other than another fire and rescue authority, who employs fire-fighters for securing the provision by that person of assistance for the purpose of the discharge by the authority of a function conferred on it under the Fire and Rescue Services Act 2004 s 7, 8 or 9 (see PARA 59): s 15(1), (2). Arrangements under s 15 may include provision as to the terms on which assistance is to be provided, including provision as to payment: s 15(3).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(2) LOCAL ADMINISTRATION/(i) Fire Authorities and their Functions/23. Fire alarms.

### **23. Fire alarms.**

The powers of a fire authority<sup>1</sup> include power to provide and maintain fire alarms in such positions in any street<sup>2</sup> or public place<sup>3</sup> as it thinks proper and to affix any such fire alarm to any wall or fence adjoining a street or public place<sup>4</sup>. Before exercising the powers conferred<sup>5</sup> in relation to a highway for which it is not the highway authority<sup>6</sup>, a fire authority must obtain the consent of the highway authority<sup>7</sup>. Without prejudice to this requirement, the powers must not be exercised in a county district except after consultation with the council of the county district<sup>8</sup>; and they may not be exercised except after consultation with the chief officer of police<sup>9</sup> for the area in which the fire alarms are to be placed<sup>10</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 For the meaning of 'street' see PARA 66 note 3 post.

3 'Public place' is not defined, but see *Airton v Scott* (1909) 73 JP 148, DC; *R v Collinson* (1931) 75 Sol Jo 491, CA.

4 Fire Services Act 1947 s 3(1)(c). As to false alarms see PARA 80 post.

5 le conferred by *ibid* s 3(1)(c).

6 For the meaning of 'highway authority' see the Highways Act 1980 s 1 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 et seq); definition applied by the Fire Services Act 1947 s 38(1) (definition amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 Pt IV para 99(3)).

7 Fire Services Act 1947 s 3(2) (amended by the New Roads and Street Works Act 1991 Sch 8 Pt IV para 99(1), (2); and the Post Office Act 1969 s 141, Sch 11 Pt II).

8 Fire Services Act 1947 s 3(2)(a).

9 For the meaning of 'chief officer of police' see the Police Act 1996 s 101(1); the Interpretation Act 1978 s 5, Sch 1 (amended by the Police Act 1996 s 103(1), Sch 7 Pt II para 32); and POLICE vol 36(1) (2007 Reissue) PARA 105.

10 Fire Services Act 1947 s 3(2)(b).

### **UPDATE**

#### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **23 Fire alarms**

TEXT AND NOTES--Repealed: Fire and Rescue Services Act 2004 Sch 2.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(2) LOCAL ADMINISTRATION/(ii) Combination Schemes/24. Making and approval of combination schemes.

## **(ii) Combination Schemes**

### **24. Making and approval of combination schemes.**

If it appears to any two or more fire authorities<sup>1</sup> that it is expedient that their areas should be combined for fire-fighting purposes<sup>2</sup>, they may submit to the Secretary of State<sup>3</sup> a scheme in that behalf (referred to as a 'combination scheme') and the Secretary of State may by order approve any scheme submitted to him<sup>4</sup>. If it appears to the Secretary of State that it is expedient in the interests of efficiency that a combination scheme should be made for the areas of any two or more fire authorities<sup>5</sup> and no satisfactory scheme has been submitted to him<sup>6</sup> he may for that purpose by order make such scheme as he considers expedient<sup>7</sup>. Where the Secretary of State proposes to make such a scheme he must give to the fire authorities concerned notice of the general nature of the proposed scheme and, unless they assent or certain provisions<sup>8</sup> apply, he must cause a public local inquiry to be held by a person appointed by him<sup>9</sup>.

If, in a case where the authorities to whom notice of a proposed scheme has been given do not assent to the scheme, it appears to the Secretary of State that the proposed scheme contains only such provision as is appropriate in consequence of an order containing provision for giving effect to a structural change<sup>10</sup> and the period, if any, that has elapsed between the making of that order and the giving of that notice does not exceed 12 months, the Secretary of State is under a duty to consider any representations made by those authorities with respect to the proposed scheme within such period as may have been specified in the notice, but is not required to cause a public local inquiry to be held<sup>11</sup>.

The Secretary of State must lay before each House of Parliament the draft of any scheme proposed to be made by him and, where a local inquiry has been held, a copy of the report of the person by whom the inquiry was held must be laid with it<sup>12</sup>. If either House, within the period of 40 days beginning with the day on which the draft scheme is laid before it, resolves that the scheme is not to be made, no further proceedings may be taken on it<sup>13</sup>.

All fire authorities are now combined except metropolitan county fire and civil defence authorities<sup>14</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 For the meaning of 'fire-fighting purposes' see PARA 59 post.

3 As to the Secretary of State see PARA 10 ante.

4 Fire Services Act 1947 s 5(1). If an order is made under the Local Government Act 1972 Pt IV (ss 53-78) (as amended) or the Local Government Act 1992 Pt II (ss 12-27) (as amended) affecting any area, a combination scheme may be made under the Fire Services Act 1947 with respect to that area before the date on which that order gives effect to any transfer of functions or alteration of boundaries in relation to that area but so as to come into operation on or after that date: s 10 (amended by the Local Government Act 1972 s 197(5); and the Local Government Act 1992 s 27, Sch 3). In relation to such a scheme the provisions of the Fire Services Act 1947 apply subject to any necessary modifications as if references to the area of a fire authority included references to any area which (apart from any combination scheme under this provision) would become such an area by virtue of such an order or which in accordance with such an order, is to be treated, for the purposes of the making of any combination scheme, as an area which would become the area of a fire authority by virtue of that order; and as if references, in relation to such an area, to the fire authority were references to the fire authority for any area the whole or any part of which will be included in that area: s 10 (as so amended).

5 See PARA 17 ante.

6 le submitted to him by the fire authorities for those areas under the Fire Services Act 1947 s 5 (as amended): see the text to note 4 supra.

7 Ibid s 6(1) (amended by the Local Government Act 1972 ss 197(1), 272(1), Sch 30). The provisions of the Fire Services Act 1947 s 5(2) (as amended) (see PARA 26 post) apply to the scheme as they do to a scheme made under s 5(1): s 6(1) (as so amended).

8 le ibid s 6(2A) (as added): see the text and notes 10-11 infra.

9 Ibid s 6(2) (amended by the Local Government Act 1992 Sch 3 para 1(a)). The person appointed by the Secretary of State to hold the inquiry must not be an officer of a fire authority or any government department: Fire Services Act 1947 s 6(2) (as so amended). As to public local inquiries see PARA 15 ante.

10 le an order under the Local Government Act 1992 Pt II (as amended) containing provision for giving effect to a structural change (within the meaning of Pt II (as amended)): see the Fire Services Act 1947 s 6(2A) (added by the Local Government Act 1992 Sch 3 para 1(b)).

11 Fire Services Act 1947 s 6(2A) (as added: see note 10 supra).

12 Ibid s 6(3).

13 Ibid s 6(3). In reckoning the period of 40 days no account is to be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days: s 6(3) proviso. The discontinuance of proceedings in respect of a draft scheme does not prejudice the laying before Parliament of a new draft scheme: see s 6(3). As to laying drafts before Parliament see the Laying of Documents before Parliament (Interpretation) Act 1948 s 1(1); and PARLIAMENT vol 34 (Reissue) PARA 941.

14 As to metropolitan fire and civil defence authorities see PARA 17 ante.

## **UPDATE**

### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **24-26 Combination Schemes**

Replaced<sup>1</sup>.

If it appears to the Secretary of State that, in the interests of economy, efficiency and effectiveness, or public safety, there should be a single fire and rescue authority<sup>2</sup> for the combined area<sup>3</sup>, he may by order make a scheme constituting, as a body corporate<sup>4</sup>, a fire and rescue authority for the combined area of two or more existing fire and rescue authorities<sup>5</sup>. A combined fire and rescue authority<sup>6</sup> has power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions<sup>7</sup>.

The Secretary of State may by order vary or revoke a combination scheme<sup>8</sup>, but before doing so must consult (1) any fire and rescue authority which appears to him likely to be affected<sup>9</sup>; (2) any other authority which would, apart from the scheme, be a fire and rescue authority and which appears to him likely to be affected<sup>10</sup>; (3) any local authority all or part of whose area forms part of the combined area or would, under the scheme as varied, form part of the combined area<sup>11</sup>; and (4) any other persons he considers appropriate<sup>12</sup>. Such an order varying or revoking a combination scheme may include provision for the transfer of staff, property, rights and liabilities from the combined fire and rescue authority to any other fire and rescue authority<sup>13</sup>.

A combination scheme<sup>14</sup> may make any supplementary and incidental provision which the Secretary of State considers appropriate<sup>15</sup>. In particular, a scheme may make provision about (a) the composition of the combined authority, including provision for the appointment of members by the existing authorities or by the Secretary of State<sup>16</sup>; (b) the proceedings of the combined authority, including different provision in respect of the voting rights of different categories of member<sup>17</sup>; (c) the financing of the combined authority, including provision for the payment of expenses out of a combined fire and rescue service fund maintained by the existing authorities<sup>18</sup>; (d) the discharge of the functions of the combined authority, including provision for the discharge of functions by committees<sup>19</sup>; (e) officers of the combined authority<sup>20</sup>; (f) the acquisition, appropriation and disposal of land by the combined authority, including provision for the acquisition of land by agreement or compulsorily<sup>21</sup>; (g) the transfer of staff, property, rights and liabilities to or from the combined authority<sup>22</sup>; (h) the payment of compensation in respect of loss suffered by any person in consequence of the constitution of the combined authority<sup>23</sup>.

1 1947 Act repealed: Fire and Rescue Services Act 2004 Sch 2. A combination scheme approved under the 1947 Act s 5 or made under s 6 which is in force before the repeal of those sections continues to have effect despite that repeal: 2004 Act s 4(1), (2). After appropriate consultation and, generally, causing an inquiry to be held, the Secretary of State may by order vary or revoke a combination scheme approved under the 1947 Act s 5 or made under s 6: see 2004 Act s 4 (amended by Local Government and Public Involvement in Health Act 2007 Sch 1 para 22(3)). In relation to Wales, references to the Secretary of State are substituted with a reference to the National Assembly for Wales: 2004 Act s 62(1). As to orders made under the 2004 Act see PARA 10 ante.

2 As to fire and rescue authorities see PARA 17 ante.

3 2004 Act s 2(2).

4 Ibid s 3(1).

5 Ibid s 2(1). Such a scheme may be made by the Secretary of State to give effect to a draft scheme submitted to him by the existing authorities in question or on his own initiative: s 2(3). A scheme which is made to give effect to a draft scheme may include any modifications to the draft scheme which seem appropriate to the Secretary of State after consulting the existing authorities in question: s 2(4). Before making a scheme on his own initiative, the Secretary of State must consult the existing authorities in question, any local authority all or part of whose area forms part of the combined area, and any other persons he considers appropriate and must cause an inquiry to be held: s 2(5), (8)(a). 'Local authority' means a district council, a county council, a county borough council, a London borough council, the Greater London Authority, the Common Council of the City of London or the Council of the Isles of Scilly: s 57. The Secretary of State is not required to cause such an inquiry to be held, but may do so, if (1) the existing authorities in question agree to the making of the scheme; (2) it appears to the Secretary of State that the scheme is to be made solely for the purpose of giving effect to an order under the Local Government Act 1972 Pt 4 (ss 46-78), the Regional Assemblies (Preparations) Act 2003 s 17 or the Local Government and Public Involvement in Health Act 2007 Pt 1; or (3) the Secretary of State considers that, in the interests of public safety, the scheme should be made without delay: 2004 Act s 2(9)(a), (c), (d) (amended by Local Government and Public Involvement in Health Act 2007 Sch 1 para 22(2)). The provisions of the Local Government Act 1972 s 250(2)-(5) (conduct of local inquiries: see LOCAL GOVERNMENT (EDITION 5) vol 69 (2009) PARA 105) apply in relation to such an inquiry: 2004 Act s 56.

If an order is made under the Local Government Act 1972 Pt 4 (ss 46-78), the Regional Assemblies (Preparations) Act 2003 s 17 or the Local Government and Public Involvement in Health Act 2007 Pt 1 in relation to any area, but the order, or any provision of the order, has not come into force, then a scheme under the 2004 Act s 2 may be made as if the order or provision were in force, and s 2 has effect in relation to any scheme so made, or proposed to be so made, as if the order or provision were in force; but a scheme so made may not come into force before the order or provision does: s 2(10), (11) (s 2(10) amended by Local Government and Public Involvement in Health Act 2007 Sch 1 para 22(2); Local Democracy, Economic Development and Construction Act 2009 Sch 7 Pt 4).

6 Ie constituted by a scheme under the 2004 Act s 2 or a scheme approved under the Fire Services Act 1947 s 5 or made under s 6.

7 2004 Act s 5.

8 le made under *ibid* s 2.

9 *Ibid* s 2(6)(a).

10 *Ibid* s 2(6)(b).

11 *Ibid* s 2(6)(c).

12 *Ibid* s 2(6)(d).

13 *Ibid* s 2(7). Before varying or revoking a scheme, the Secretary of State must cause an inquiry to be held: s 2(8)(b). The Secretary of State is not required to cause such an inquiry to be held, but may do so, if (1) the combined fire and rescue authority and any other authority which would, apart from the scheme, be a fire and rescue authority under s 1 (see *PARA 17 ante*) and which would be affected by the variation or revocation, agree to the variation or revocation; (2) it appears to the Secretary of State that the variation or revocation is to be made solely for the purpose of giving effect to an order under the Local Government Act 1972 Pt 4 (ss 46-78), the Local Government Act 1992 Pt 2 (ss 12-27) or the Regional Assemblies (Preparations) Act 2003 s 17; or (3) the Secretary of State considers that, in the interests of public safety, the scheme should be made, varied or revoked without delay: 2004 Act s 2(9)(b)-(d) (s 2(9)(c) amended by Local Democracy, Economic Development and Construction Act 2009 Sch 7 Pt 4). The provisions of the Local Government Act 1972 s 250(2)-(5) (conduct of local inquiries: see *LOCAL GOVERNMENT (EDITION 5)* vol 69 (2009) *PARA 105*) apply in relation to such an inquiry: 2004 Act s 56.

14 le made under *ibid* s 2.

15 *Ibid* s 3(2).

16 *Ibid* s 3(3)(a). A combination scheme may not make provision for the appointment by the Secretary of State of a number of members equal to, or exceeding, half the total number of members capable of being appointed: s 3(4). If a combination scheme provides for members of a combined authority to be appointed by the Secretary of State, it must also provide that any decision of the authority to issue a precept under the Local Government Finance Act 1992 s 40, or to make the calculations required by s 43, must be approved by more than half of the members of the authority not appointed by the Secretary of State: 2004 Act s 3(5).

17 *Ibid* s 3(3)(b).

18 *Ibid* s 3(3)(c).

19 *Ibid* s 3(3)(d).

20 *Ibid* s 3(3)(e).

21 *Ibid* s 3(3)(f).

22 *Ibid* s 3(3)(g).

23 *Ibid* s 3(3)(h).



Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(2) LOCAL ADMINISTRATION/(ii) Combination Schemes/25. Amendment and revocation of combination scheme.

## **25. Amendment and revocation of combination scheme.**

A combination scheme<sup>1</sup>, whether approved or made by the Secretary of State<sup>2</sup>, may be amended or revoked by a subsequent scheme which itself may be either approved or made by the Secretary of State<sup>3</sup>. The authority or authorities who may submit any such amending or revoking scheme or schemes to the Secretary of State<sup>4</sup> are the fire authority or authorities constituted by the scheme or schemes to be revoked, together, in the case of an amending scheme which provides for the inclusion in a combined area of the area of a fire authority other than one constituted by a combination scheme, with that fire authority<sup>5</sup>. In the case of an amending or revoking scheme made by the Secretary of State, it would appear that he must be of the opinion that it is expedient in the interests of efficiency that the original scheme should be amended or revoked<sup>6</sup>. Where he proposes to make a scheme for the amendment or revocation of a combination scheme or schemes the Secretary of State must give notice<sup>7</sup> to the authority or authorities by whom a scheme for that purpose might have been submitted<sup>8</sup>, and the council of any county or, in Wales, of any county or county borough, comprised in the combined area constituted by the original scheme or schemes<sup>9</sup>. Subject to these and any other necessary modifications, the procedure on amendment or revocation of a scheme is the same as that which applies in the making of the original scheme<sup>10</sup>.

1 For the meaning of 'combination scheme' see PARA 24 ante.

2 I.e. a scheme approved or made under the Fire Services Act 1947 s 5 (as amended) or s 6 (as amended): see PARA 24 ante. As to the Secretary of State see PARA 10 ante.

3 Ibid s 9(1).

4 I.e. under ibid s 5(1): see PARA 24 ante.

5 Ibid s 9(3). See, however, PARA 24 note 4 ante. For the meaning of 'fire authority' see PARA 17 ante.

6 See ibid ss 6(1), s 9(1); and the text and note 10 infra.

7 I.e. under ibid s 6(2) (as amended): see PARA 24 ante.

8 I.e. by virtue of ibid s 9(3): see the text to note 5 supra.

9 Ibid s 9(4) (amended by the Local Government Act 1972 s 272 (1), Sch 30; and the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 10(2)).

10 Fire Services Act 1947 s 9(1). See further PARA 25 ante.

## **UPDATE**

### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **24-26 Combination Schemes**

Replaced<sup>1</sup>.

If it appears to the Secretary of State that, in the interests of economy, efficiency and effectiveness, or public safety, there should be a single fire and rescue authority<sup>2</sup> for the combined area<sup>3</sup>, he may by order make a scheme constituting, as a body corporate<sup>4</sup>, a fire and rescue authority for the combined area of two or more existing fire and rescue authorities<sup>5</sup>. A combined fire and rescue authority<sup>6</sup> has power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions<sup>7</sup>.

The Secretary of State may by order vary or revoke a combination scheme<sup>8</sup>, but before doing so must consult (1) any fire and rescue authority which appears to him likely to be affected<sup>9</sup>; (2) any other authority which would, apart from the scheme, be a fire and rescue authority and which appears to him likely to be affected<sup>10</sup>; (3) any local authority all or part of whose area forms part of the combined area or would, under the scheme as varied, form part of the combined area<sup>11</sup>; and (4) any other persons he considers appropriate<sup>12</sup>. Such an order varying or revoking a combination scheme may include provision for the transfer of staff, property, rights and liabilities from the combined fire and rescue authority to any other fire and rescue authority<sup>13</sup>.

A combination scheme<sup>14</sup> may make any supplementary and incidental provision which the Secretary of State considers appropriate<sup>15</sup>. In particular, a scheme may make provision about (a) the composition of the combined authority, including provision for the appointment of members by the existing authorities or by the Secretary of State<sup>16</sup>; (b) the proceedings of the combined authority, including different provision in respect of the voting rights of different categories of member<sup>17</sup>; (c) the financing of the combined authority, including provision for the payment of expenses out of a combined fire and rescue service fund maintained by the existing authorities<sup>18</sup>; (d) the discharge of the functions of the combined authority, including provision for the discharge of functions by committees<sup>19</sup>; (e) officers of the combined authority<sup>20</sup>; (f) the acquisition, appropriation and disposal of land by the combined authority, including provision for the acquisition of land by agreement or compulsorily<sup>21</sup>; (g) the transfer of staff, property, rights and liabilities to or from the combined authority<sup>22</sup>; (h) the payment of compensation in respect of loss suffered by any person in consequence of the constitution of the combined authority<sup>23</sup>.

1 1947 Act repealed: Fire and Rescue Services Act 2004 Sch 2. A combination scheme approved under the 1947 Act s 5 or made under s 6 which is in force before the repeal of those sections continues to have effect despite that repeal: 2004 Act s 4(1), (2). After appropriate consultation and, generally, causing an inquiry to be held, the Secretary of State may by order vary or revoke a combination scheme approved under the 1947 Act s 5 or made under s 6: see 2004 Act s 4 (amended by Local Government and Public Involvement in Health Act 2007 Sch 1 para 22(3)). In relation to Wales, references to the Secretary of State are substituted with a reference to the National Assembly for Wales: 2004 Act s 62(1). As to orders made under the 2004 Act see PARA 10 ante.

2 As to fire and rescue authorities see PARA 17 ante.

3 2004 Act s 2(2).

4 Ibid s 3(1).

5 Ibid s 2(1). Such a scheme may be made by the Secretary of State to give effect to a draft scheme submitted to him by the existing authorities in question or on his own initiative: s 2(3). A scheme which is made to give effect to a draft scheme may include any modifications to the draft scheme which seem appropriate to the Secretary of State after consulting the existing authorities in question: s 2(4). Before making a scheme on his own initiative, the Secretary of State must consult the existing authorities in question, any local authority all or part of whose area forms part of the combined area, and any other persons he considers appropriate and must cause an inquiry to be held: s 2(5), (8)(a). 'Local authority' means a district council, a county council, a county borough council, a London borough council, the Greater London Authority, the Common Council of the City of

London or the Council of the Isles of Scilly: s 57. The Secretary of State is not required to cause such an inquiry to be held, but may do so, if (1) the existing authorities in question agree to the making of the scheme; (2) it appears to the Secretary of State that the scheme is to be made solely for the purpose of giving effect to an order under the Local Government Act 1972 Pt 4 (ss 46-78), the Regional Assemblies (Preparations) Act 2003 s 17 or the Local Government and Public Involvement in Health Act 2007 Pt 1; or (3) the Secretary of State considers that, in the interests of public safety, the scheme should be made without delay: 2004 Act s 2(9)(a), (c), (d) (amended by Local Government and Public Involvement in Health Act 2007 Sch 1 para 22(2)). The provisions of the Local Government Act 1972 s 250(2)-(5) (conduct of local inquiries: see LOCAL GOVERNMENT (EDITION 5) vol 69 (2009) PARA 105) apply in relation to such an inquiry: 2004 Act s 56.

If an order is made under the Local Government Act 1972 Pt 4 (ss 46-78), the Regional Assemblies (Preparations) Act 2003 s 17 or the Local Government and Public Involvement in Health Act 2007 Pt 1 in relation to any area, but the order, or any provision of the order, has not come into force, then a scheme under the 2004 Act s 2 may be made as if the order or provision were in force, and s 2 has effect in relation to any scheme so made, or proposed to be so made, as if the order or provision were in force; but a scheme so made may not come into force before the order or provision does: s 2(10), (11) (s 2(10) amended by Local Government and Public Involvement in Health Act 2007 Sch 1 para 22(2); Local Democracy, Economic Development and Construction Act 2009 Sch 7 Pt 4).

6     le constituted by a scheme under the 2004 Act s 2 or a scheme approved under the Fire Services Act 1947 s 5 or made under s 6.

7     2004 Act s 5.

8     le made under *ibid* s 2.

9     *Ibid* s 2(6)(a).

10    *Ibid* s 2(6)(b).

11    *Ibid* s 2(6)(c).

12    *Ibid* s 2(6)(d).

13    *Ibid* s 2(7). Before varying or revoking a scheme, the Secretary of State must cause an inquiry to be held: s 2(8)(b). The Secretary of State is not required to cause such an inquiry to be held, but may do so, if (1) the combined fire and rescue authority and any other authority which would, apart from the scheme, be a fire and rescue authority under s 1 (see PARA 17 ante) and which would be affected by the variation or revocation, agree to the variation or revocation; (2) it appears to the Secretary of State that the variation or revocation is to be made solely for the purpose of giving effect to an order under the Local Government Act 1972 Pt 4 (ss 46-78), the Local Government Act 1992 Pt 2 (ss 12-27) or the Regional Assemblies (Preparations) Act 2003 s 17; or (3) the Secretary of State considers that, in the interests of public safety, the scheme should be made, varied or revoked without delay: 2004 Act s 2(9)(b)-(d) (s 2(9)(c) amended by Local Democracy, Economic Development and Construction Act 2009 Sch 7 Pt 4). The provisions of the Local Government Act 1972 s 250(2)-(5) (conduct of local inquiries: see LOCAL GOVERNMENT (EDITION 5) vol 69 (2009) PARA 105) apply in relation to such an inquiry: 2004 Act s 56.

14    le made under *ibid* s 2.

15    *Ibid* s 3(2).

16    *Ibid* s 3(3)(a). A combination scheme may not make provision for the appointment by the Secretary of State of a number of members equal to, or exceeding, half the total number of members capable of being appointed: s 3(4). If a combination scheme provides for members of a combined authority to be appointed by the Secretary of State, it must also provide that any decision of the authority to issue a precept under the Local Government Finance Act 1992 s 40, or to make the calculations required by s 43, must be approved by more than half of the members of the authority not appointed by the Secretary of State: 2004 Act s 3(5).

17    *Ibid* s 3(3)(b).

18    *Ibid* s 3(3)(c).

19    *Ibid* s 3(3)(d).

20    *Ibid* s 3(3)(e).

21 Ibid s 3(3)(f).

22 Ibid s 3(3)(g).

23 Ibid s 3(3)(h).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(2) LOCAL ADMINISTRATION/(ii) Combination Schemes/26. Subject matter of combination and amending schemes.

## **26. Subject matter of combination and amending schemes.**

A combination scheme<sup>1</sup> must make provision with respect to the following matters:

- 3 (1) the constitution of an authority as the fire authority for the combined area, the establishment of a fire brigade for it, the transfer to that brigade of members of fire brigades maintained by the constituent authorities and the appointment as first chief officer of the brigade established by the scheme of such person as may be specified by it<sup>2</sup>;
- 4 (2) the payment of the expenses of the fire authority constituted by the scheme out of a combined fire service fund constituted in accordance with the provisions of the scheme<sup>3</sup>;
- 5 (3) the payment into the combined fire service fund, out of the local funds of the constituent areas, of contributions assessed in accordance with the provisions of the scheme for meeting liabilities imposed on that fund by or under the scheme<sup>4</sup>;
- 6 (4) the transfer to the fire authority constituted by the scheme of such property, rights and liabilities of the constituent authorities, being properties, rights and liabilities held or incurred in connection with the provision of fire services, as may be determined by or under the scheme, or the use by the fire authority constituted by the scheme of any such property<sup>5</sup>;
- 7 (5) the appointment of officers of that fire authority, and the transfer to it of such officers of the constituent authorities as may be determined by or under the scheme<sup>6</sup>; and
- 8 (6) the payment by such authority, subject to such provisions as may be provided by the scheme, of compensation to persons employed by any of the constituent authorities who suffer direct pecuniary loss in consequence of the scheme or anything done under it by reason of the determination of their appointments or diminution of their emoluments<sup>7</sup>;
- 9 (7) in the case of persons who, having been chief officers of fire brigades maintained by any of the constituent authorities immediately before the coming into operation of the scheme, do not on its coming into operation become chief officer of the fire brigade established by the scheme, for the payment in lieu of compensation under head (6) above of emoluments, and of pensions, gratuities or allowances, of such amounts, subject to such conditions, and by such authority as may be provided by the scheme<sup>8</sup>;
- 10 (8) any other matters incidental to or consequential on the provisions of the scheme<sup>9</sup>;
- 11 (9) the audit of the combined fire authority's accounts<sup>10</sup>.

A combination scheme may provide for:

- 12 (a) the application, in relation to the constitution and proceedings of the fire authority constituted by it and in relation to the officers of that authority, of the provisions of the Local Government Act 1972<sup>11</sup> relating to members, committees and officers of local authorities, subject to such modifications as may be prescribed by the scheme<sup>12</sup>;

- 13 (b) the making of arrangements with any constituent authority for the use by the fire authority of the services of officers and servants of the constituent authority and for the making of contracts and payments on behalf of the fire authority by the constituent authority, if so authorised by the scheme<sup>13</sup>.

The provisions relating to the subject matter of combination schemes<sup>14</sup> have effect in relation to any subsequent amending or revoking schemes subject to any necessary modifications<sup>15</sup>. Without prejudice to the generality of the provisions relating to the amendment and revocation of combination schemes<sup>16</sup>, provision may be made by any such subsequent scheme for:

- 14 (i) the division of the combined area into any two or more areas for the purposes of the Fire Services Act 1947, being either counties or, in Wales, counties or county boroughs or combined areas constituted by the scheme, or for the inclusion in the combined area of the area of any other fire authority<sup>17</sup>;
- 15 (ii) the dissolution of any fire authority constituted by the original scheme, and the winding up of any combined fire service fund established under it, or for the reconstitution of any such authority or fund<sup>18</sup>;
- 16 (iii) the transfer or re-transfer to such fire brigades as may be determined by the subsequent scheme of members of the fire brigade established by the original scheme<sup>19</sup>;
- 17 (iv) the transfer or re-transfer to such authorities as may be determined by the subsequent scheme of any officers, property, rights or liabilities of the fire authority constituted by the original scheme<sup>20</sup>;
- 18 (v) any other matters incidental to, or consequential on, the provisions of the subsequent scheme<sup>21</sup>.

1 For the meaning of 'combination scheme' see PARA 24 ante.

2 Fire Services Act 1947 s 5(2)(a). For the meaning of 'fire authority' see PARA 17 ante. As to fire brigades see PARA 35 et seq post.

3 Ibid s 5(2)(b). As to financial matters see PARA 31 et seq post.

4 Ibid s 5(2)(c).

5 Ibid s 5(2)(d) (amended by the Local Government Act 1972 s 272(1), Sch 30).

6 Fire Services Act 1947 s 5(2)(d) (as amended: see note 5 supra).

7 Ibid s 5(2)(e).

8 Ibid s 5(2)(f).

9 Ibid s 5(2).

10 See the Audit Commission Act 1998 s 2, Sch 2 para 1(m); and PARA 34 post. See also LOCAL GOVERNMENT vol 69 (2009) PARA 757.

11 See the Local Government Act 1972 Pt V (ss 79-100) (as amended), Pt VI (ss 101-109) (as amended), Pt VII (ss 111-146) (as amended), which replace the provisions of the Local Government Act 1933 Pt II (ss 57-84), Pt III (ss 85-97), Pt IV (ss 98-124) (all repealed) referred to in the Fire Services Act 1947 s 8(2). See further LOCAL GOVERNMENT vol 69 (2009) PARA 117 et seq.

12 Ibid s 8(2); Interpretation Act 1978 s 17(2)(a).

13 Fire Services Act 1947 s 8(6).

14 Ie the foregoing provisions of the Fire Services Act 1947, where applicable: see s 9(1).

15 Ibid s 9(1). This provision is subject to s 9(2)-(4): s 9(1).

16 le *ibid* s 9(1): see note 15 *supra*; and PARA 25 *ante*.

17 *Ibid* s 9(2)(a) (amended by the Local Government Act 1972 Sch 30; and the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 10(2)).

18 Fire Services Act 1947 s 9(2)(b).

19 *Ibid* s 9(2)(c).

20 *Ibid* s 9(2)(d).

21 *Ibid* s 9(2)(e).

## UPDATE

### 10-34 Fire Service Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### 24-26 Combination Schemes

Replaced<sup>1</sup>.

If it appears to the Secretary of State that, in the interests of economy, efficiency and effectiveness, or public safety, there should be a single fire and rescue authority<sup>2</sup> for the combined area<sup>3</sup>, he may by order make a scheme constituting, as a body corporate<sup>4</sup>, a fire and rescue authority for the combined area of two or more existing fire and rescue authorities<sup>5</sup>. A combined fire and rescue authority<sup>6</sup> has power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions<sup>7</sup>.

The Secretary of State may by order vary or revoke a combination scheme<sup>8</sup>, but before doing so must consult (1) any fire and rescue authority which appears to him likely to be affected<sup>9</sup>; (2) any other authority which would, apart from the scheme, be a fire and rescue authority and which appears to him likely to be affected<sup>10</sup>; (3) any local authority all or part of whose area forms part of the combined area or would, under the scheme as varied, form part of the combined area<sup>11</sup>; and (4) any other persons he considers appropriate<sup>12</sup>. Such an order varying or revoking a combination scheme may include provision for the transfer of staff, property, rights and liabilities from the combined fire and rescue authority to any other fire and rescue authority<sup>13</sup>.

A combination scheme<sup>14</sup> may make any supplementary and incidental provision which the Secretary of State considers appropriate<sup>15</sup>. In particular, a scheme may make provision about (a) the composition of the combined authority, including provision for the appointment of members by the existing authorities or by the Secretary of State<sup>16</sup>; (b) the proceedings of the combined authority, including different provision in respect of the voting rights of different categories of member<sup>17</sup>; (c) the financing of the combined authority, including provision for the payment of expenses out of a combined fire and rescue service fund maintained by the existing authorities<sup>18</sup>; (d) the discharge of the functions of the combined authority, including provision for the discharge of functions by committees<sup>19</sup>; (e) officers of the combined authority<sup>20</sup>; (f) the acquisition, appropriation and disposal of land by the combined authority, including provision for the acquisition of land by agreement or compulsorily<sup>21</sup>; (g) the transfer of staff, property, rights and liabilities to or from the combined authority<sup>22</sup>; (h) the

payment of compensation in respect of loss suffered by any person in consequence of the constitution of the combined authority<sup>23</sup>.

1 1947 Act repealed: Fire and Rescue Services Act 2004 Sch 2. A combination scheme approved under the 1947 Act s 5 or made under s 6 which is in force before the repeal of those sections continues to have effect despite that repeal: 2004 Act s 4(1), (2). After appropriate consultation and, generally, causing an inquiry to be held, the Secretary of State may by order vary or revoke a combination scheme approved under the 1947 Act s 5 or made under s 6: see 2004 Act s 4 (amended by Local Government and Public Involvement in Health Act 2007 Sch 1 para 22(3)). In relation to Wales, references to the Secretary of State are substituted with a reference to the National Assembly for Wales: 2004 Act s 62(1). As to orders made under the 2004 Act see PARA 10 ante.

2 As to fire and rescue authorities see PARA 17 ante.

3 2004 Act s 2(2).

4 Ibid s 3(1).

5 Ibid s 2(1). Such a scheme may be made by the Secretary of State to give effect to a draft scheme submitted to him by the existing authorities in question or on his own initiative: s 2(3). A scheme which is made to give effect to a draft scheme may include any modifications to the draft scheme which seem appropriate to the Secretary of State after consulting the existing authorities in question: s 2(4). Before making a scheme on his own initiative, the Secretary of State must consult the existing authorities in question, any local authority all or part of whose area forms part of the combined area, and any other persons he considers appropriate and must cause an inquiry to be held: s 2(5), (8)(a). 'Local authority' means a district council, a county council, a county borough council, a London borough council, the Greater London Authority, the Common Council of the City of London or the Council of the Isles of Scilly: s 57. The Secretary of State is not required to cause such an inquiry to be held, but may do so, if (1) the existing authorities in question agree to the making of the scheme; (2) it appears to the Secretary of State that the scheme is to be made solely for the purpose of giving effect to an order under the Local Government Act 1972 Pt 4 (ss 46-78), the Regional Assemblies (Preparations) Act 2003 s 17 or the Local Government and Public Involvement in Health Act 2007 Pt 1; or (3) the Secretary of State considers that, in the interests of public safety, the scheme should be made without delay: 2004 Act s 2(9)(a), (c), (d) (amended by Local Government and Public Involvement in Health Act 2007 Sch 1 para 22(2)). The provisions of the Local Government Act 1972 s 250(2)-(5) (conduct of local inquiries: see LOCAL GOVERNMENT (EDITION 5) vol 69 (2009) PARA 105) apply in relation to such an inquiry: 2004 Act s 56.

If an order is made under the Local Government Act 1972 Pt 4 (ss 46-78), the Regional Assemblies (Preparations) Act 2003 s 17 or the Local Government and Public Involvement in Health Act 2007 Pt 1 in relation to any area, but the order, or any provision of the order, has not come into force, then a scheme under the 2004 Act s 2 may be made as if the order or provision were in force, and s 2 has effect in relation to any scheme so made, or proposed to be so made, as if the order or provision were in force; but a scheme so made may not come into force before the order or provision does: s 2(10), (11) (s 2(10) amended by Local Government and Public Involvement in Health Act 2007 Sch 1 para 22(2); Local Democracy, Economic Development and Construction Act 2009 Sch 7 Pt 4).

6 Ie constituted by a scheme under the 2004 Act s 2 or a scheme approved under the Fire Services Act 1947 s 5 or made under s 6.

7 2004 Act s 5.

8 Ie made under ibid s 2.

9 Ibid s 2(6)(a).

10 Ibid s 2(6)(b).

11 Ibid s 2(6)(c).

12 Ibid s 2(6)(d).

13 Ibid s 2(7). Before varying or revoking a scheme, the Secretary of State must cause an inquiry to be held: s 2(8)(b). The Secretary of State is not required to cause such an inquiry to be held, but may do so, if (1) the combined fire and rescue authority and any other authority which would, apart from the scheme, be a fire and rescue authority under s 1 (see PARA 17 ante) and which would be affected by the variation or revocation, agree to the variation or revocation; (2) it appears to the



Secretary of State that the variation or revocation is to be made solely for the purpose of giving effect to an order under the Local Government Act 1972 Pt 4 (ss 46-78), the Local Government Act 1992 Pt 2 (ss 12-27) or the Regional Assemblies (Preparations) Act 2003 s 17; or (3) the Secretary of State considers that, in the interests of public safety, the scheme should be made, varied or revoked without delay: 2004 Act s 2(9)(b)-(d) (s 2(9)(c) amended by Local Democracy, Economic Development and Construction Act 2009 Sch 7 Pt 4). The provisions of the Local Government Act 1972 s 250(2)-(5) (conduct of local inquiries: see LOCAL GOVERNMENT (EDITION 5) vol 69 (2009) PARA 105) apply in relation to such an inquiry: 2004 Act s 56.

14     Ie made under *ibid* s 2.

15     *Ibid* s 3(2).

16     *Ibid* s 3(3)(a). A combination scheme may not make provision for the appointment by the Secretary of State of a number of members equal to, or exceeding, half the total number of members capable of being appointed: s 3(4). If a combination scheme provides for members of a combined authority to be appointed by the Secretary of State, it must also provide that any decision of the authority to issue a precept under the Local Government Finance Act 1992 s 40, or to make the calculations required by s 43, must be approved by more than half of the members of the authority not appointed by the Secretary of State: 2004 Act s 3(5).

17     *Ibid* s 3(3)(b).

18     *Ibid* s 3(3)(c).

19     *Ibid* s 3(3)(d).

20     *Ibid* s 3(3)(e).

21     *Ibid* s 3(3)(f).

22     *Ibid* s 3(3)(g).

23     *Ibid* s 3(3)(h).

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### **(iii) Collaboration between Fire Authorities etc**

#### **27. Joint committees.**

The Fire Services Act 1947 contemplates forms of collaboration between fire authorities which do not amount to combination<sup>1</sup>. Thus agency arrangements<sup>2</sup> and reinforcement schemes<sup>3</sup> may be made and joint committees<sup>4</sup> may be appointed<sup>5</sup>. The appointment of such a committee does not prevent the subsequent making of a combination scheme<sup>6</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante. As to combination schemes see PARAS 24-26 ante.

2 As to agency arrangements see PARA 28 post.

3 As to reinforcement schemes see PARA 29 post.

4 See under the provisions of the Local Government Act 1972 s 102(1)(b) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 371), which replaces the Local Government Act 1933 s 91 (repealed). A joint committee may include persons who are not members of the appointing authority or authorities: see the Local Government Act 1972 s 102(3) (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 371. These provisions may be applied in the case of a combined fire authority: see the Fire Services Act 1947 s 8(2); and PARA 26 ante.

5 The Secretary of State must be notified of such appointment: *ibid* s 7(1) (added by the Fire Services Act 1959 s 3); Local Government Act 1972 s 272(2). As to the Secretary of State see PARA 10 ante.

6 Fire Services Act 1947 s 7(2).

#### **UPDATE**

#### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

#### **27 Joint committees**

TEXT AND NOTES--1947 and 1959 Acts replaced by the Fire and Rescue Services Act 2004.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(2) LOCAL ADMINISTRATION/ (iii) Collaboration between Fire Authorities etc/28. Agency arrangements.

## **28. Agency arrangements.**

A fire authority<sup>1</sup> may make arrangements, in respect of all or any part of its area, for the discharge of all or any of its functions under the Fire Services Act 1947<sup>2</sup> by any other fire authority or other persons who maintain a fire brigade, on such terms as to payments or otherwise as may be agreed<sup>3</sup>. Any fire authority which has requested, or been requested by, another fire authority to enter into such arrangements, or to vary or cancel any such arrangements, may, in the absence of agreement between them, request the Secretary of State to determine what arrangements, if any, should be entered into or, as the case may be, what variation should be made or whether the arrangements should be cancelled<sup>4</sup>. Where it appears to the Secretary of State expedient, in order to secure greater efficiency, that consideration should be given to whether such arrangements should be entered into by two fire authorities, or whether such arrangements should be varied or cancelled, he may so notify the fire authorities concerned<sup>5</sup>.

Where a request is made to the Secretary of State<sup>6</sup>, or notice is given by him<sup>7</sup>, he must give the fire authorities concerned an opportunity to make representations; and, if he thinks fit or if those authorities so request, he must cause a public local inquiry to be held<sup>8</sup>. If he is then satisfied that it is expedient for greater efficiency that arrangements should be made, varied or cancelled, he may direct the authorities to enter into such arrangements as may be specified or, as the case may be, make such variations in the arrangements as may be specified or cancel previous arrangements<sup>9</sup>. Such arrangements may only subsequently be varied or cancelled with his approval<sup>10</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 General provision authorising arrangements for the discharge of one local authority's functions by another is made by the Local Government Act 1972 s 101 (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 370.

3 Fire Services Act 1947 s 12(1) (amended by the Fire Services Act 1959 s 14(4), Schedule). The Secretary of State must be notified, although his approval is not required: Fire Services Act 1959 s 4(3). As to the Secretary of State see PARA 10 ante.

4 Fire Services Act 1947 s 12(2) (substituted by the Fire Services Act 1959 s 4(1)).

5 Fire Services Act 1947 s 12(3) (substituted by the Fire Services Act 1959 s 4(2)).

6 *Ie* under the Fire Services Act 1947 s 12(2) (as substituted: see note 4 *supra*): s 12(4).

7 *Ie* under *ibid* s 12(3) (as substituted: see note 5 *supra*): s 12(4).

8 *Ibid* s 12(4). As to inquiries see PARA 15 ante.

9 *Ibid* s 12(5) (amended by the Fire Services Act 1959 ss 4, 14(4), Schedule).

10 Fire Services Act 1959 s 4(3).

## **UPDATE**

### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **28 Agency arrangements**

TEXT AND NOTES--Repealed: Fire and Rescue Services Act 2004 Sch 2.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(2) LOCAL ADMINISTRATION/ (iii) Collaboration between Fire Authorities etc/29. Reinforcement schemes.

## **29. Reinforcement schemes.**

It is the duty of fire authorities<sup>1</sup>, so far as practicable, to join in the making of reinforcement schemes for securing the rendering of mutual assistance for the purpose of dealing with fires occurring in their areas<sup>2</sup> where either it is necessary to supplement the services provided<sup>3</sup> by the authority in whose area the fire occurs<sup>4</sup> or reinforcements at any fire can be more readily obtained from the resources of other authorities participating in the scheme than from those of the authority in whose area the fire occurs<sup>5</sup>. Where a reinforcement scheme has come into operation, the fire authorities to whom the scheme applies must carry it into effect<sup>6</sup>. The Secretary of State must be notified of any such scheme or any variation or revocation of it<sup>7</sup>. A fire authority may also enter into arrangements with persons (not being other fire authorities) who maintain fire brigades to secure, on such terms as to payment or otherwise as may be provided by or under the arrangements, the provision by those persons of assistance for the purpose of dealing with fires occurring in the area of the authority<sup>8</sup>.

A reinforcement scheme may provide for the apportionment between the fire authorities concerned of the expenses incurred in taking measures to secure the efficient operation of the scheme, in such proportions as may be specified by or under the scheme<sup>9</sup>. Where a fire authority cannot obtain the agreement of one or more other fire authorities to the making, variation or revocation of a reinforcement scheme, the Secretary of State, at the request of the authority, may give directions in the matter after giving all the authorities concerned an opportunity to make representations<sup>10</sup>. Where the Secretary of State gives directions for the making or variation of a scheme he may provide for such uniformity of equipment<sup>11</sup> as appears to him to be necessary for the purpose of ensuring that the fire brigades affected will be able to render efficient assistance in pursuance of the scheme<sup>12</sup>.

For the purposes of his functions in relation to reinforcement schemes, the Secretary of State may hold such public local inquiries as he thinks fit<sup>13</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 Fire Services Act 1947 s 2(1).

3 Ie under ibid s 1 (as amended): see PARA 59 et seq post.

4 Ibid s 2(1)(a).

5 Ibid s 2(1)(b).

6 Ibid s 2(6).

7 Ibid s 2(2) (substituted by the Fire Services Act 1959 s 2). As to the Secretary of State see PARA 10 ante.

8 Fire Services Act 1947 s 2(8). Such arrangements may be entered into where: (1) it is necessary to supplement the services provided by the authority under s 1 (see PARA 59 et seq post) (s 2(8)(a)); or (2) where reinforcements at any fire occurring in the area of the authority can be more readily obtained from the resources of those persons than from its own resources (s 2(8)(b)).

9 Ibid s 2(4).

10 Ibid s 2(3) (substituted by the Fire Services Act 1959 s 2). The directions the Secretary of State may give are that the authorities make or, as the case may be, revoke such scheme or variation as may be specified in the direction: Fire Services Act 1947 2(3) (as so substituted).

- 11 For the meaning of 'equipment' see PARA 18 note 3 ante.
- 12 Fire Services Act 1947 s 2(5) (amended by the Fire Services Act 1959 s 2).
- 13 Fire Services Act 1947 s 2(9). As to inquiries see PARA 15 ante.

## **UPDATE**

### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **29 Reinforcement schemes**

TEXT AND NOTES--1947 Act replaced by the Fire and Rescue Services Act 2004.

A fire and rescue authority must, so far as practicable, enter into a scheme, called a reinforcement scheme, with other fire and rescue authorities (see PARA 17) for securing mutual assistance as between the authorities for the purpose of discharging the functions conferred under s 7, 8 or 9 (see PARA 59) on any of the authorities participating in the scheme, and the participating authorities must give effect to the scheme: s 13(1), (2). A reinforcement scheme may make provision for apportioning between the participating authorities any expenses incurred in taking measures to secure the efficient operation of the scheme: s 13(3). The authorities participating in a reinforcement scheme must notify the Secretary of State or, in relation to Wales, the National Assembly for Wales of the making of the scheme, the variation of the scheme and the revocation of the scheme: s 13(4).

If a fire and rescue authority has asked one or more other fire and rescue authorities to agree to the making, variation or revocation of a reinforcement scheme, the authorities are unable to agree to the making, terms, variation or revocation of the scheme, and one of the authorities asks the Secretary of State or the Assembly to act, he may direct the authorities concerned (1) to make a reinforcement scheme in the terms specified in the direction; (2) to make one or more specified variations to a reinforcement scheme; (3) to revoke a reinforcement scheme: s 14(1), (2). Before giving such a direction the Secretary of State or the Assembly must give both or all the authorities concerned an opportunity to make representations to him, and may cause an inquiry to be held: s 14(3). The provisions of the Local Government Act 1972 s 250(2)-(5) (conduct of local inquiries: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) apply in relation to such an inquiry: 2004 Act s 56. Further, by virtue of the Tribunals and Inquiries (Discretionary Inquiries) Order 1975, SI 1975/1379, arts 3, 4, Schedule para 19A (para 19A added by SI 2004/3168 (England), SI 2005/2929 (Wales)), the Tribunals and Inquiries Act 1992 applies in relation to inquiries held under the 2004 Act s 14(3).

A fire and rescue authority may enter into arrangements with another fire and rescue authority or any other person, for the discharge to any extent by that other authority or person of a function conferred on the first authority under any of ss 6-9 or 11: s 16(1). However, an authority may enter into arrangements with a person under s 16(1) in relation to its function of extinguishing fires only if the person employs fire-fighters: s 16(2). Arrangements under s 16 may include provision as to the terms on which any function is to be discharged, including provision as to payment: s 16(3).

The Secretary of State or the Assembly may direct two fire and rescue authorities (a) to enter into arrangements under s 16 in the terms specified in the direction; (b) to make one or more specified variations to any such arrangements; (c) to cancel any such arrangements: s 17(1). The Secretary of State or the Assembly may give a direction under s 17(1) on his own initiative or at the request of one of the authorities: s 17(2). However, before giving a direction, Secretary of State or the Assembly must give the authorities concerned an opportunity to make representations to him and he may cause an inquiry to be held: s 17(3). The Secretary of State or the Assembly may give a direction only if, after considering any representations made and, if an inquiry is held, the report of the person by whom it is held, he considers it expedient to do so with a view to securing greater economy, efficiency and effectiveness: s 17(4). The provisions of the Local Government Act 1972 s 250(2)-(5) (conduct of local inquiries: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) apply in relation to an inquiry held under the 2004 Act s 17(3): s 56. In England, by virtue of the Tribunals and Inquiries (Discretionary Inquiries) Order 1975, SI 1975/1379, arts 3, 4, Schedule para 19A, the Tribunals and Inquiries Act 1992 applies in relation to inquiries held under the 2004 Act s 14(3).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(2) LOCAL ADMINISTRATION/(iv) Land/30. Acquisition and disposal of land.

#### **(iv) Land**

#### **30. Acquisition and disposal of land.**

The provisions of the Local Government Act 1972 relating to the acquisition of land by agreement and the appropriation and disposal of land<sup>1</sup> apply to fire authorities constituted by combination schemes<sup>2</sup> as they apply to fire authorities being councils of counties or, in Wales, counties or county boroughs<sup>3</sup>.

A fire authority including a fire authority constituted by a combination scheme<sup>4</sup> may be authorised by the Secretary of State<sup>5</sup> (or, in relation to Wales, by the National Assembly for Wales<sup>6</sup>) to purchase compulsorily any land, whether situate within its area or not, which it requires for the purposes of its functions under the Fire Services Act 1947<sup>7</sup>. A combined fire authority may also be authorised to compulsorily purchase land required for the purpose of civil defence<sup>8</sup>.

<sup>1</sup> See the Local Government Act 1972 ss 120, 122, 123 (ss 122, 123 as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 509 et seq.

<sup>2</sup> As to combination schemes see PARAS 24-26 ante. For the meaning of 'fire authority' see PARA 17 ante.

<sup>3</sup> Fire Services Act 1947 s 8(3) (amended by the Local Government Act 1972 s 272, Sch 30; the Acquisition of Land Act 1981 s 34, Sch 6; and the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 10(1)); Interpretation Act 1978 s 17(2)(a). Accordingly, references in the Local Government Act 1972 to local authorities include references to fire authorities constituted by combination schemes: Fire Services Act 1947 s 8(3) (as so amended); Interpretation Act 1978 s 17(2)(a). As to the relaxation of ministerial control see the Town and Country Planning Act 1959 ss 22, 23, 26 (all as amended), Sch 4 paras 1, 9; and the Local Government Act 1972 s 128(3).

<sup>4</sup> See the Fire Services Act 1947 s 8(3) (as amended: see note 3 supra).

<sup>5</sup> As to the Secretary of State see PARA 10 ante.

<sup>6</sup> See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

<sup>7</sup> Fire Services Act 1947 s 3(5) (amended by the Acquisition of Land Act 1981 s 34, Sch 4 para 1, Sch 6; and by virtue of the Secretary of State for Wales and Ministers of Land and Natural Resources Order, SI 1965/319; the Transfer of Functions (Miscellaneous) Order 1967, SI 1967/486; and the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1); Fire Services Act 1947 s 8(3) (as amended: see note 3 supra). The Acquisition of Land Act 1981 applies to such compulsory purchases: Fire Services Act 1947 s 3(5) (as so amended). As to procedure and compensation see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 549 et seq.

<sup>8</sup> See the Civil Defence Act 1948 s 4(1); and WAR AND ARMED CONFLICT

### **UPDATE**

#### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.



### **30 Acquisition and disposal of land**

TEXT AND NOTES--1947 Act replaced by the Fire and Rescue Services Act 2004. For provisions relating to the acquisition, appropriation and disposal of land by fire and rescue authorities constituted by combination schemes, see PARA 24-26.

NOTE 7--The Secretary of State or, in relation to Wales, the National Assembly for Wales, may give directions to fire authorities about the disposal of land: see the Fire Services Act 2003 s 1(1)(b); and PARA 20.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(2) LOCAL ADMINISTRATION/(v) Local Expenditure/31. Expenditure of fire authorities.

## **(v) Local Expenditure**

### **31. Expenditure of fire authorities.**

The expenditure of a fire authority<sup>1</sup> in connection with the provision of fire services<sup>2</sup> is met in the same way as other local government expenditure<sup>3</sup> except that the payment of the expenses of a combined fire authority is met out of the combined fire service fund<sup>4</sup>.

Expenditure incurred in carrying out civil defence functions<sup>5</sup> ranks for civil defence grant<sup>6</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 As to the provision of fire services see PARA 18 ante. The expenditure includes that incurred in providing pensions: see PARA 45 et seq post. As to the refund of value added tax chargeable on the supply of goods or services to a fire authority see PARA 32 post; and VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 304.

3 Met out of the county fund: see the Local Government Act 1972 s 148(2), (4) (s 148(2) as amended; and s 148(4) as substituted); and LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 550. The Local Government Act 1972 s 148 (as amended) does not apply in relation to a Welsh county council or county borough council: see s 148(6) (as added); and LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 550.

4 See the Fire Services Act 1947 s 5(2)(b); and PARA 26 ante.

5 See PARA 73 post.

6 See the Civil Defence (Grant) Regulations 1953, SI 1953/1777 (as amended); and WAR AND ARMED CONFLICT.

## **UPDATE**

### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **31 Expenditure of fire authorities**

TEXT AND NOTES 1-4--1947 Act replaced by Fire and Rescue Services Act 2004.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(2) LOCAL ADMINISTRATION/(v) Local Expenditure/32. Charges by fire authorities.

### **32. Charges by fire authorities.**

Save as expressly provided by the Fire Services Act 1947<sup>1</sup>, a fire authority<sup>2</sup> must not make any charge for services rendered by it<sup>3</sup>. Certain fire authorities, however, are empowered to levy payments analogous to charges<sup>4</sup>.

Most of the activities of fire authorities are outside the scope of the provisions relating to value added tax<sup>5</sup> as being carried out either under a statutory requirement or otherwise than as a business activity<sup>6</sup>.

1 See PARA 20 ante (charges for services other than for fire-fighting purposes); para 28 ante (payments in pursuance of agency arrangements); and PARA 29 ante (payments in pursuance of reinforcement schemes).

2 For the meaning of 'fire authority' see PARA 17 ante.

3 Fire Services Act 1947 s 3(4). It would appear that this provision overrules the principle laid down in *Grays UDC v Grays Chemical Works Ltd* [1918] 2 KB 461; *Glasbrook Bros Ltd v Glamorgan County Council* [1925] AC 270, HL; *China Navigation Co Ltd v A-G* [1932] 2 KB 197, CA, that although a public authority under a duty to provide protection for the public against some danger may not make a charge for carrying out that duty, it may make a charge for providing at the request of a person or body what the authority considers to be unnecessary or excessive protection. It does not follow, however, that the cost incurred by an occupier of property in putting out a fire must be paid by the fire authority. If, for instance, the occupier hires labour to assist the fire brigade in extinguishing eg a forest fire, it appears that the fire authority would not be liable for the cost of that labour unless the authority had agreed to its hire. The duty of an occupier to perform certain services himself is impliedly recognised in *Grays UDC v Grays Chemical Works* supra.

4 See, for example, (in respect of payments by insurance companies) the Liverpool Corporation Act 1921 s 509; and the Salford Improvement Act 1862 s 274 (both repealed in so far as they relate to payments by owners of property). See also the Metropolitan Fire Brigade Act 1865 s 13 (as amended), ss 14, 15 (as amended), ss 16-17, 24, which provide for payments by insurance companies on a basis different from that provided in the Liverpool and Salford Acts (under which payments are related to turnouts). The fire insurance companies pay the London Fire and Emergency Planning Authority an annual contribution at the rate of £35 for every £1,000,000 of property in Greater London, other than the outer London boroughs, which they insure against fire: see the Metropolitan Fire Brigade Act 1865 s 13 (amended by the Statute Law Revision Act 1875); the London Government Act 1963 s 48(3) (amended by the Local Government Act 1985 s 102(2), Sch 17; and by virtue of the Greater London Authority Act 1999 s 328(7)); the Local Government Act 1985 s 37, Sch 11 para 2(4); and LONDON GOVERNMENT.

5 A fire authority constituted by a combination scheme under the Fire Services Act 1947 s 6 (as amended) (see PARA 24 ante) is a body to which the Value Added Tax Act 1994 ss 33, 42 (s 33 as amended) apply: see ss 33(3)(a), 42; the Value Added Tax (Refund of Tax) (No 2) Order 1995, SI 1995/2999, art 2; and VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 304.

6 See HM Customs and Excise Notice 749 (Local Authorities and Similar Bodies); and VALUE ADDED TAX vol 49(1) (2005 Reissue) PARA 23.

## **UPDATE**

### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## 32 Charges by fire authorities

TEXT AND NOTES--1947 Act replaced by Fire and Rescue Services Act 2004.

The Secretary of State or the National Assembly for Wales may by order authorise a fire and rescue authority to charge a person of a specified description for any action of a specified description taken by the authority: s 19(1). Such an order may authorise charging for extinguishing fires, or protecting life and property in the event of fires, only in respect of fires which are at sea or under the sea: s 19(2). However, such an order may not authorise charging for emergency medical assistance: s 19(3). The Secretary of State's and the Assembly's power to authorise a fire and rescue authority to make charges includes the power to authorise a charge to be imposed on, or recovered from, a person other than the person in respect of whom action is taken by the authority: s 19(4). If a fire and rescue authority is authorised by an order under s 19(1) to charge for taking action of a particular description and the authority decides to do so, the amount of the charge is to be set by the authority, and it may charge different amounts in different circumstances (and may charge nothing): s 19(5). In setting the amount of a charge, the authority must secure that, taking one financial year with another, the authority's income from charges does not exceed the cost to the authority of taking the action for which the charges are imposed: s 19(6). Before making an order under s 19 the Secretary of State or, as the case may be, the Assembly must consult any persons he considers appropriate: s 19(7). The Fire and Rescue Services (England) Order 2004, SI 2004/2305 (amended by SI 2007/2784), and the Fire and Rescue Services (Charging) (Wales) Order 2006, SI 2006/1852, specify actions for which authorises fire and rescue authorities may charge for and the person who may be subject to the charge.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(2) LOCAL ADMINISTRATION/(v) Local Expenditure/33. Borrowing powers of fire authorities.

### **33. Borrowing powers of fire authorities.**

For the purposes of the discharge of its functions under a combination scheme<sup>1</sup>, the fire authority<sup>2</sup> constituted by the scheme has the powers of the council of a county or, in Wales, of a county or county borough in relation to the borrowing of money for fire service purposes, and the relevant provisions of the Local Government and Housing Act 1989 relating to borrowing<sup>3</sup> and any other enactment relating to the borrowing of money by local authorities apply accordingly, subject to such adaptations and modifications as are prescribed by the combination scheme<sup>4</sup>.

The same provisions relating to borrowing apply to metropolitan county fire and civil defence authorities<sup>5</sup>.

1 As to combination schemes see PARAS 24-26 ante.

2 For the meaning of 'fire authority' see PARA 17 ante.

3 See the Local Government and Housing Act 1989 ss 39(1)(ib), 43-47 (s 39(1)(ib) added by the Local Government Changes for England (Finance) Regulations 1994, SI 1994/2825, reg 9; and substituted by the Local Government Reorganisation (Wales) (Capital Finance) Order 1996, SI 1996/633, art 2); and LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 594 et seq.

4 Fire Services Act 1947 s 8(4) (amended by the Local Government Act 1972 s 272(1), Sch 30; and the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 10(1)); Interpretation Act 1978 s 17(2)(a).

5 See the Local Government and Housing Act 1989 ss 39(1)(g), 43-47 (s 39(1)(g) amended by the Police and Magistrates Court Act 1994 s 93, Sch 9 Pt I); the Local Government Act 1985 Pt IV (ss 23-42) (as amended). As to metropolitan county fire and civil defence authorities see PARA 17 ante.

## **UPDATE**

### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **33 Borrowing powers of fire authorities**

TEXT AND NOTES 1-4--1947 Act replaced by the Fire and Rescue Services Act 2004.

NOTE 3--1989 Act s 39(1)(ib) amended: Regional Assemblies (Preparations) Act 2003 Schedule para 4.

TEXT AND NOTE 5--For 'metropolitan county fire and civil defence authority' read 'metropolitan country fire and rescue authority': Civil Contingencies Act 2004 Sch 2 Pt 1 para 10(2).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/2. FIRE SERVICE ADMINISTRATION/(2) LOCAL ADMINISTRATION/(v) Local Expenditure/34. Accounts and audit.

### **34. Accounts and audit.**

The accounts of a fire authority<sup>1</sup> constituted by a combination scheme<sup>2</sup> must be made up each year to 31 March or such other date as the Secretary of State<sup>3</sup> (or, in relation to Wales, the National Assembly for Wales<sup>4</sup>), may generally or in any special case direct, and must be audited in accordance with the Audit Commission Act 1998 by an auditor or auditors appointed by the Commission<sup>5</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 As to combination schemes see PARAS 24-26 ante.

3 As to the Secretary of State see PARA 10 ante.

4 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

5 Audit Commission Act 1998 s 2(1)(b), (2), Sch 2 para 1(m); National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. The reference in the text to the Commission is to the Audit Commission for Local Authorities and the National Health Service in England and Wales: see the Audit Commission Act 1998 s 53(1); and LOCAL GOVERNMENT vol 69 (2009) PARA 744 et seq.

### **UPDATE**

#### **10-34 Fire Service Administration**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **34 Accounts and audit**

TEXT AND NOTES 1, 2--For 'fire authority ... scheme' read 'fire and rescue authority constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies': 1998 Act Sch 2 para 2(m) (substituted by the 2004 Act Sch 1 para 88).

NOTE 5--1998 Act s 53(1) amended: Local Government and Public Involvement in Health Act 2007 Sch 9 para 1(2)(k), Sch 18 Pt 9.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(1) ESTABLISHMENT MATTERS/35. Fire brigade establishments.

### **3. FIRE BRIGADES**

#### **(1) ESTABLISHMENT MATTERS**

##### **35. Fire brigade establishments.**

The establishment of members of a fire brigade of different descriptions<sup>1</sup> and ranks, and of fire stations and equipment<sup>2</sup> of different descriptions to be maintained by a fire authority<sup>3</sup> is determined in accordance with the provisions of a scheme for the time being in force made by the authority, referred to as an establishment scheme<sup>4</sup>.

The scheme must provide for the chief officer of the fire brigade to be directly responsible to the fire authority maintaining the brigade or a committee of that authority<sup>5</sup>.

1 It seems that 'different descriptions' means the distinction between members with different obligations, eg whole-time and part-time members, or members whose duties include fire-fighting and those whose duties do not.

2 For the meaning of 'equipment' see PARA 18 note 3 ante.

3 Is maintained in pursuance of the relevant provisions of the Fire Services Act 1947 ss 1-18 (as amended): see s 19(1). For the meaning of 'fire authority' see PARA 17 ante.

4 See *ibid* s 19(1). The reference in the text to a scheme made by the authority is to one made under s 19 (as amended): s 19(1). The provisions of s 19 (as amended) apply to a fire authority constituted by a combination scheme (see PARAS 24-26 ante) as they apply to other fire authorities (see PARA 17 ante) and accordingly no provision may be made in a combination scheme for matters to which establishment schemes relate: s 7(2)(a) (amended by the Local Government (Scotland) Act 1973 ss 147(8), 237(1), Sch 29). However, any combination scheme, and any scheme revoking a combination scheme, must require the authority constituted by the scheme, or each of the councils becoming fire authorities in consequence of the revocation, to submit an establishment scheme for its area to the Secretary of State, who may approve it with or without modification; and the establishment scheme comes into force as approved by him when the authority or council become a fire authority: Fire Services Act 1959 s 7(2)(a) (as so amended).

5 Fire Services Act 1947 s 19(2).

#### **UPDATE**

##### **35-39 Fire brigade establishments ... Disciplinary offences**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

##### **35 Fire brigade establishments**

TEXT AND NOTES--1947 Act s 19 repealed: Fire and Rescue Services Act 2004 Sch 2.

NOTE 4--1959 Act s 7(2)(a) repealed: Local Government Act 2003 s 121(b).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(1) ESTABLISHMENT MATTERS/36. Secretary of State's functions in relation to establishment schemes.

### **36. Secretary of State's functions in relation to establishment schemes.**

Every fire authority<sup>1</sup> must notify the Secretary of State<sup>2</sup> not later than the end of January in any year of the establishment scheme in force in its area on the first day of that month in that year<sup>3</sup>. A fire authority must not, except with the approval of the Secretary of State, vary the establishment scheme for its area by closing a fire station or reducing the number of<sup>4</sup>:

- 19 (1) whole-time members of any rank of the fire brigade to which the scheme relates, other than members whose duties do not normally include fire-fighting<sup>5</sup>;
- 20 (2) part-time members of that brigade<sup>6</sup>;
- 21 (3) pumping appliances kept ready to attend fires<sup>7</sup>; or
- 22 (4) other appliances kept ready to attend fires<sup>8</sup>.

If, as respects the area of any fire authority, at any time it appears to the Secretary of State that the establishment scheme in force is not satisfactory, he may himself make such a scheme after affording to the authority an opportunity of making representations to him<sup>9</sup>. For the purpose of his functions, both in respect of the approval of a variation in a scheme and the making of a scheme<sup>10</sup>, the Secretary of State may hold such public local inquiries<sup>11</sup> as he thinks fit<sup>12</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 As to the Secretary of State see PARA 10 ante.

3 Fire Services Act 1947 s 19(3) (substituted by the Fire Services Act 1959 s 7(1)).

4 Fire Services Act 1947 s 19(4) (substituted by the Fire Services Act 1959 s 7(1)).

5 Fire Services Act 1947 s 19(4)(a) (as substituted: see note 4 supra).

6 Ibid s 19(4)(b) (as substituted: see note 4 supra).

7 Ibid s 19(4)(c) (as substituted: see note 4 supra).

8 Ibid s 19(4)(d) (as substituted: see note 4 supra).

9 Ibid s 19(5)(b) (amended by the Fire Services Act 1959 s 14(4), Schedule). The provisions of the Fire Services Act 1947 s 19(1), (2) (see PARA 35 ante), (4) (as substituted) (see notes 4-8 supra) and (5) (as amended) apply to a scheme made under s 19(5) (as amended) as if it were an establishment scheme: s 19(6) (amended by the Fire Services Act 1959 Schedule).

10 I.e. his functions under the Fire Services Act 1947 s 19 (as amended).

11 As to public local inquiries see PARA 15 ante.

12 Fire Services Act 1947 s 19(8). If in connection with the making of a scheme under s 19(5)(b) (as amended) (see the text and note 9 supra) the fire authority so requires, the Secretary of State must cause a public local inquiry to be held before he makes the scheme: s 19(8).

## **UPDATE**

### **35-39 Fire brigade establishments ... Disciplinary offences**



Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **36 Secretary of State's functions in relation to establishment schemes**

TEXT AND NOTES--Repealed: Local Government Act 2003 s 121(a).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(1) ESTABLISHMENT MATTERS/37. Standards of training and equipment.

### **37. Standards of training and equipment.**

After consultation with the Central Fire Brigades Advisory Council<sup>1</sup>, the Secretary of State<sup>2</sup> may by regulations provide for the observance by fire authorities of such requirements as appear to him necessary to secure efficient fire services with respect to standards of training for members of fire brigades maintained in pursuance of the Fire Services Act 1947 and the design or performance of equipment<sup>3</sup> for such brigades<sup>4</sup>.

1 As to the Central Fire Brigades Advisory Council see PARA 12 ante.

2 As to the Secretary of State see PARA 10 ante. As to the provision of equipment and training by the Secretary of State see PARAS 13-14 ante.

3 For the meaning of 'equipment' see PARA 18 note 3 ante.

4 Fire Services Act 1947 s 21. At the date at which this volume states the law no regulations had been made under s 21. For the meaning of 'fire authority' see PARA 17 ante.

### **UPDATE**

#### **35-39 Fire brigade establishments ... Disciplinary offences**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

#### **37 Standards of training and equipment**

TEXT AND NOTES--Repealed: Fire and Rescue Services Act 2004 Sch 2.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(2) TERMS OF SERVICE/38. Appointment, promotion and conditions of service.

## **(2) TERMS OF SERVICE**

### **38. Appointment, promotion and conditions of service.**

The method of appointment of chief officers of fire brigades and the qualifications for any appointment to fire brigades or to any rank, and for promotion<sup>1</sup> into any such rank and the method of ascertaining any such qualifications are governed by regulations made by the Secretary of State after consultation with the Central Fire Brigades Advisory Council<sup>2</sup>.

A person is not to be appointed to be a chief officer of a brigade unless:

- 23 (1) he has (a) served in the rank of Divisional Officer (Class 1), or in a higher rank, as a member of a fire brigade maintained by a fire authority in Great Britain under the Fire Services Act 1947 or by the Fire Authority for Northern Ireland<sup>3</sup>; and (b) completed the Senior Officers' Course, the Senior Command Course or the Brigade Command Course at a training institution established and maintained by the Secretary of State<sup>4</sup>; or
- 24 (2) on 1 September 1988 he is serving, other than in a temporary or acting capacity, as the chief officer of a fire brigade maintained by<sup>5</sup> (a) a fire authority mentioned in head (1) above<sup>6</sup>, (b) the States of Guernsey Island Police Committee<sup>7</sup>, (c) the States of Jersey Defence Committee<sup>8</sup>, or (d) the Isle of Man Department of Home Affairs<sup>9</sup>.

The appointment of a chief officer must be advertised by the fire authority who must consider all applications received and interview such of the applicants as it considers suitably qualified<sup>10</sup>.

The qualifications for promotion to or appointment in the rank of firefighter in a brigade, in the case of a person who is to serve as a whole-time member on terms under which he is or may be required to engage in fire-fighting, are<sup>11</sup> that he must:

- 25 (i) be of good character<sup>12</sup>;
- 26 (ii) have attained the age of 18<sup>13</sup>;
- 27 (iii) have satisfied a duly qualified medical practitioner selected by the fire authority maintaining the brigade that his lung function<sup>14</sup> and his general level of fitness, as measured by a step-test, are such as to enable him to undertake fire-fighting duties, and that he has not any physical abnormality and is not suffering from any disease which, in either case, would be likely to incapacitate him temporarily or permanently for the performance of such duties<sup>15</sup>;
- 28 (iv) have taken, under the supervision of the fire authority maintaining the brigade, a test of the isometric muscle strength of his hand-grip and the combined lifting strength of his back and legs and achieved a minimum measurement<sup>16</sup>;
- 29 (v) have passed such examination in educational subjects as the fire authority may require, being such an examination as necessitates a reasonable standard of proficiency in reading, writing and arithmetic and such other subjects, if any, as the authority may require, or be, to the satisfaction of the authority, of such educational standard that it is unnecessary for him to take any such examination<sup>17</sup>.

None of the above requirements applies to the appointment of a person to a brigade who, at the time when it is decided to appoint him to the brigade, is serving as a whole-time member of

another brigade or of a fire brigade maintained by a fire authority in Scotland under the provisions of the Fire Services Act 1947 in a rank higher than that of junior firefighter, or as a person employed whole-time by the fire authority for Northern Ireland as a fire officer or firefighter and who is serving on terms under which he is or may be required to engage in fire-fighting and whose engagement as such a member or person is not expressed to be temporary only<sup>18</sup>.

To be appointed to a rank higher than that of firefighter a person must have the prescribed fire brigade service and be qualified for promotion to the rank in question or have been qualified in his old brigade<sup>19</sup>, or he must possess special qualifications and his appointment must be approved by the Secretary of State<sup>20</sup>.

The qualifications for appointment in the rank of junior firefighter in a brigade are<sup>21</sup> that he must:

- 30 (A) be of good character<sup>22</sup>;
- 31 (B) be between the ages of 16 and 17 years<sup>23</sup>; and
- 32 (C) have satisfied the chief officer that he is likely, on attaining the age of 18 years, to be able to satisfy the qualifications for promotion to the rank of firefighter<sup>24</sup>.

Matters relating to maintenance of discipline<sup>25</sup>, pensions<sup>26</sup> and compulsory retirement<sup>27</sup> are also governed by subordinate legislation, but other conditions of service are contractual<sup>28</sup>.

1 'Promotion' does not include promotion which is expressed to be temporary only: Fire Services (Appointments and Promotion) Regulations 1978, SI 1978/436, reg 2(1)(g).

2 Fire Services Act 1947 s 18(1) (amended by the Fire Services Act 1959 ss 6, 14(4), Schedule). The reference in the text to fire brigades is to those maintained in pursuance of the Fire Services Act 1947: s 18(1) (as so amended). As to the Secretary of State see PARA 10 ante. As to the Central Fire Brigades Advisory Council see PARA 12 ante. The Fire Services Examinations Board has replaced the Fire Services Central Examinations Board for the purpose of exercising functions relating to the conduct of examinations under the Fire Services (Appointments and Promotion) Regulations 1978, SI 1978/436 (as amended): see the Fire Services (Examinations) Regulations 1985, SI 1985/1176, reg 3(1).

3 Fire Services (Appointments and Promotion) Regulations 1978, SI 1978/436, reg 3(1)(a)(i) (reg 3(1) substituted by SI 1988/1362). The reference in the text to a training institution established and maintained by the Secretary of State is to one maintained under the Fire Services Act 1947 s 23(1)(a): see PARA 13 ante. For the meaning of 'fire authority' see PARA 17 ante. For the meaning of 'Great Britain' see PARA 3 note 2 ante.

4 Fire Services (Appointments and Promotion) Regulations 1978, SI 1978/436, reg 3(1)(a)(ii) (as substituted: see note 3 supra).

5 Ibid reg 3(1)(b) (as substituted: see note 3 supra).

6 Ibid reg 3(1)(b)(i) (as substituted: see note 3 supra).

7 Ibid reg 3(1)(b)(ii) (as substituted: see note 3 supra).

8 Ibid reg 3(1)(b)(iii) (as substituted: see note 3 supra).

9 Ibid reg 3(1)(b)(iv) (as substituted: see note 3 supra).

10 See ibid reg 3(2) (substituted by SI 1981/787).

11 Fire Services (Appointments and Promotion) Regulations 1978, SI 1978/436, reg 5(1) (amended by SI 1991/369). The qualifications for appointment in the rank of firefighter are subject to the Fire Services (Appointments and Promotion) Regulations 1978, SI 1978/436, reg 5(2): see the text and note 18 infra.

12 Ibid reg 5(1)(a). Regulation 5(1)(a) also applies in relation to the qualifications for appointment of a person as a retained member of a brigade: reg 5(3)(a) (substituted by SI 1997/959). For these purposes, 'retained member of a brigade' means a person who is to serve as a part-time member of a brigade on terms

under which he is or may be required to engage in fire-fighting in return for an annual retaining fee: Fire Services (Appointments and Promotion) Regulations 1978, SI 1978/436, reg 5(3)(c) (reg 5(3) substituted by SI 1988/2235). As to fire-fighting see PARA 59 et seq post.

13 Fire Services (Appointments and Promotion) Regulations 1978, SI 1978/436, reg 5(1)(b) (amended by SI 1997/959; SI 1988/2235). The Fire Services (Appointments and Promotion) Regulations 1978, SI 1978/436, reg 5(1)(b) (as amended) also applies in relation to the qualifications for appointment of a person as a retained member of a brigade: reg 5(3)(a) (as substituted: see note 12 supra)

14 le assessed by the measurement of the forced expiratory volume in one second (FEV1.0) and the forced vital capacity (FVC): see *ibid* reg 5(1)(d)(i).

15 *Ibid* reg 5(1)(d). The reference in the text to a firefighter's general level of fitness includes his aerobic capacity (VO2 max): reg 5(1)(d)(ii). Regulation 5(1)(d) also applies in relation to the qualifications for appointment of a person as a retained member of a brigade: reg 5(3)(a) (as substituted: see note 12 supra).

16 *Ibid* reg 1(ee) (substituted by SI 1988/2235). The minimum measurement referred to in the text is, in relation to the dominant hand, 35 kg (Fire Services (Appointments and Promotion) Regulations 1978, SI 1978/436, reg 5(1)(ee)(i) (as so substituted)); in relation to the subordinate hand, 33 kg (reg 5(1)(ee)(ii) (as so substituted)); and, in relation to the back and legs, as measured by the method known as the leg/back pull test, 117 kg (reg 5(1)(ee)(iii) (as so substituted)). Regulation 5(1)(ee) (as added) also applies in relation to the qualifications for appointment of a person as a retained member of a brigade: reg 5(3)(a) (as substituted: see note 12 supra).

17 *Ibid* reg 5(1)(f).

18 *Ibid* reg 5(2)(a) (amended by SI 1988/2235; SI 1991/369). Nothing in the Fire Services (Appointments and Promotion) Regulations 1978, SI 1978/436, reg 5(1)(b) (as amended) (see the text and note 13 supra) or reg 5(1)(f) (see the text and note 17 supra) applies in relation to the appointment of a person to a brigade who has previously served as a whole-time member of the same or another brigade or of a fire brigade maintained by a fire authority in Scotland under the provisions of the Fire Services Act 1947 in a rank higher than that of junior firefighter, or as a person employed whole-time by the Fire Authority for Northern Ireland as a fire officer or firefighter and was, immediately before he ceased to serve, serving on terms under which he was or might be required to engage in fire-fighting and whose engagement as such a member or person was not expressed to be temporary only: Fire Services (Appointments and Promotion) Regulations 1978, SI 1978/436, reg 5(2)(b) (amended by SI 1988/2235; SI 1997/959; SI 1991/369).

19 See the Fire Services (Appointments and Promotion) Regulations 1978, SI 1978/436, reg 6 (amended by SI 1985/1176; SI 1991/369; SI 1992/187; SI 1992/2365; SI 1996/2096), the Fire Services (Appointments and Promotion) Regulations 1978, reg 7 (amended by SI 1991/369).

20 Fire Services (Appointments and Promotion) Regulations 1978, reg 6(1) proviso.

21 *Ibid* reg 4(1).

22 *Ibid* reg 4(1)(a).

23 *Ibid* reg 4(1)(b). A person who has attained the age of 17 but has not attained the age of 17 years 3 months may be appointed in the rank of junior firefighter if, after considering the circumstances of his case, the fire authority decides that reg 4(2) (as amended) is to have effect in his case: reg 4(2) (amended by SI 1991/369).

24 Fire Services (Appointments and Promotion) Regulations 1978, SI 1978/436, reg 4(1)(c). The reference in the text to the qualifications for promotion to the rank of firefighter are those mentioned in reg 5(1)(d), (ee), (f) (reg 5(1)(ee) as substituted): reg 4(c) (amended by SI 1988/2235; SI 1997/959).

25 See PARA 39 et seq post.

26 See PARA 45 et seq post.

27 See PARA 46 post.

28 In practice, national conditions are negotiated by the National Joint Council for Local Authorities' Fire Brigades (a non-statutory body).

## UPDATE

### 35-39 Fire brigade establishments ... Disciplinary offences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **38 Appointment, promotion and conditions of service**

TEXT AND NOTES--SI 1978/436 replaced: Fire Services (Appointments and Promotion) (England and Wales) Regulations 2004, SI 2004/481.

Negotiating bodies may be established to negotiate conditions of service of employees of fire and rescue authorities: see the Fire and Rescue Services Act 2004 ss 32, 33; and PARA 38A.

TEXT AND NOTES 1, 2--Repealed: *ibid* Sch 2.

TEXT AND NOTES 3-24--Replaced. A person is not eligible for permanent appointment to any role in a fire brigade unless, at the time of his appointment, he has satisfied the general requirements and specific requirements for that role: SI 2004/481 reg 4. 'Permanent appointment' means an appointment for more than 12 months, and includes appointment on promotion: reg 2. 'Role' means the rank of firefighter, crew management, watch management, station management, group management, area management or brigade management: Sch 1.

The general requirements are that (1) he is of good character; (2) he has attained the age of 18 years; (3) either (a) he has attained such qualifications in educational or vocational subjects as the fire authority maintaining the brigade may require, being such qualifications as necessitate a reasonable standard of proficiency in communication and numeracy and such other subjects, if any, as the authority may require; or (b) the fire authority is satisfied that he is of such educational standard that it is unnecessary for him to attain any such qualification; and (4) a medical practitioner selected by the fire authority is satisfied that his general state of health and fitness is satisfactory to carry out the duties of the role: reg 5. The specific requirements are that he has demonstrated to the satisfaction of the authority by whom the brigade is maintained that he meets the National Occupational Standards specified for the role in question or, in the case of a person on his first appointment to a role in a brigade, is likely to meet those standards following initial training and development within the Integrated Personal Development System (as described in Fire Service Circular 9/2002): SI 2004/481 reg 6. 'National Occupational Standards' means those levels of knowledge, skills and understanding specified for the roles by the Emergency Fire Services Vocational Council and published in August 2001 and April 2003: reg 2.

None of the above requirements apply to the appointment of a person who, at the time when it is decided to appoint him to a role, is serving in that role as a member of another brigade: reg 7.

TEXT AND NOTES 25-28--The Secretary of State or, in relation to Wales, the National Assembly for Wales may by order made by statutory instrument fix or modify the conditions of service of employees of a fire and rescue authority: Fire Services Act 2003 s 1(1)(a) (amended by the 2004 Act Sch 1 para 105(2)). 'Conditions of service' includes, in particular, conditions relating to pay and allowances, hours of duty or leave, and 'fire and rescue authority' means a fire and rescue authority under the 2004 Act: 2003 Act s 3(2) (amended by the 2004 Act Sch 1 paras 106(2), Sch 2). Before making an order under the 2003 Act s 1 that fixes or modifies conditions of service of employees of a fire and rescue authority, the Secretary of State or the Assembly must, if there appears to him to be a negotiating body, submit his proposals for an order to

that body, allow that body at least 21 days to report to him about the opinions of that body on the proposals, and consider any report made to him by that body within the period he has allowed: s 1(3) (amended by the 2004 Act Sch 1 para 105(2)).

'Negotiating body' means a body of persons which (1) includes both persons representing the interests of some or all fire and rescue authorities and persons representing the interests of some or all employees of a fire and rescue authorities; and (2) is constituted in accordance with what appear to the Secretary of State or the Assembly to be appropriate arrangements for the negotiation of the conditions of service of employees of a fire and rescue authorities: 2003 Act s 3(2) (amended by the 2004 Act Sch 1 para 106(2), Sch 2). The power to make an order under s 1 includes power (a) to make provision with retrospective effect fixing or modifying the pay or allowances of employees of a fire and rescue authority, including provision having effect from a time before the passing of the 2003 Act (ie 13 November 2003); (b) to make different provision for different cases; (c) to make provision subject to exemptions and exceptions; and (d) to make incidental, supplemental, consequential and transitional provision: s 1(5) (amended by the 2004 Act Sch 1 para 105(2), Sch 2). This power does not include power retrospectively to reduce the pay and allowances payable to a person: 2003 Act s 1(6). No order may be made under s 1 more than two years after the commencement of the Act, except for the purpose of revoking provision contained in a previous order: s 1(7). A statutory instrument containing an order under s 1 that makes provision authorised by s 1(1)(a) is subject to annulment in pursuance of a resolution of either House of Parliament: s 1(8). Nothing in the 2003 Act affects the possibility of the parties agreeing on a reference to mediation, conciliation or arbitration on the interpretation of the June 2003 agreement between the Fire Brigades Union and the local authority fire service employers: s 2.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(2) TERMS OF SERVICE/38A. Negotiating bodies.

### **38A. Negotiating bodies.**

The Secretary of State<sup>1</sup> may by regulations make provision for the establishment of one or more bodies of persons ('negotiating bodies') for the purpose of negotiating the conditions of service of employees of fire and rescue authorities<sup>2</sup>. If a negotiating body has been established and the body includes persons representing the interests of employees of a particular description<sup>3</sup>, an agreement as to the conditions of service of employees of that description which is made (1) by or on behalf of a fire and rescue authority, and (2) by or on behalf of employees of the description concerned, is a legally enforceable contract only if its terms were negotiated by means of the negotiating body or in accordance with local negotiation arrangements<sup>4</sup> made by the negotiating body in respect of employees of that description<sup>5</sup>. Local negotiation arrangements may, in particular, include provision with regard to (a) the persons or descriptions of persons by whom, or by means of whom, negotiations are authorised to be carried out at local level<sup>6</sup>; (b) the conditions of service and descriptions of conditions of service authorised to be negotiated at local level<sup>7</sup>. Before making any such regulations, the Secretary of State must consult any persons he considers appropriate<sup>8</sup>.

The Secretary of State may issue guidance to negotiating bodies<sup>9</sup> in connection with the negotiation of the conditions of service of employees of fire and rescue authorities<sup>10</sup>, which negotiating bodies must have regard to in negotiating the conditions of service of employees of fire and rescue authorities<sup>11</sup>.

1 In relation to Wales, references to the Secretary of State are substituted with a reference to the National Assembly for Wales: Fire and Rescue Services Act 2004 s 62(1).

2 Ibid s 32(1). Regulations under s 32 must provide for a negotiating body established by the regulations to be composed of (1) persons representing the interests of some or all fire and rescue authorities; (2) persons representing the interests of some or all employees of fire and rescue authorities; (3) an independent chairman: s 32(2). A chairman is independent for the purposes of s 32(2) if he is not (a) a member or employee of a fire and rescue authority; (b) a minister of the Crown; (c) a person employed in the civil service; (d) a member or employee of a body representing the interests of some or all employees of fire and rescue authorities: s 32(3). As to regulations made under the 2004 Act see PARA 10.

3 Ibid s 32(4).

4 'Local negotiation arrangements' means arrangements made by a negotiating body established under s 32 for the purpose of enabling conditions of service of employees of fire and rescue authorities to be negotiated at local level: ibid s 32(6). Local negotiation arrangements may be made by a negotiating body in respect of employees of a particular description only if the negotiating body includes persons representing the interests of employees of that description: s 32(8).

5 Ibid s 32(5).

6 Ibid s 32(7)(a).

7 Ibid s 32(7)(b).

8 Ibid s 32(9).

9 I.e. a negotiating body established under ibid s 32 or any other body of persons which (1) includes both persons representing the interests of some or all fire and rescue authorities and persons representing the interests of some or all employees of fire and rescue authorities, and (2) is constituted in accordance with what appear to the Secretary of State to be appropriate arrangements for the negotiation of the conditions of service of employees of fire and rescue authorities: s 33(3).

10 Ibid s 33(1).



11 Ibid s 33(2).

## **UPDATE**

### **35-39 Fire brigade establishments ... Disciplinary offences**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(2) TERMS OF SERVICE/39. Disciplinary offences.

### **39. Disciplinary offences.**

Regulations made by the Secretary of State lay down a code<sup>1</sup> of offences against discipline with which a serving firefighter may be charged, the procedure to be followed both before and during the hearing of the charge, the disciplinary awards which may be imposed and rights of appeal<sup>2</sup>. The offences relate to: disobedience to orders; insubordination; abuse of authority; absence from duty; neglect of duty; falsehood; misconduct in relation to official documents; improper disclosure of information; corrupt or improper practice; loss of, or damage to, fire authority property; lack of fitness for duty; criminal conduct; untidiness; conduct prejudicial to discipline; and conduct prejudicial to the reputation of the brigade<sup>3</sup>.

<sup>1</sup> As to the force in law of such a code see *Cooper v Wilson* [1937] 2 KB 309, [1937] 2 All ER 726, CA, which concerns a similar code in the police force. As to the Secretary of State see PARA 10 ante.

<sup>2</sup> See the Fire Services (Discipline) Regulations 1985, SI 1985/930, which apply to all members of a fire brigade, including persons whose employment is temporary only, who are appointed on terms under which they are or may be required to engage in fire-fighting, or who are engaged in duties in connection with the reception, transmission and recording of calls for the assistance of a brigade, and with the transmission of instructions regarding the provision of such assistance by a brigade: reg 3(1). The regulations are made under the Fire Services Act 1947: see s 17(1) (amended by the Fire Services Act 1959 ss 5, 14(4), Schedule). The Secretary of State may give effect to recommendations of persons representing the interests of fire authorities (see PARA 17 ante) and persons employed as members of fire brigades maintained by them: see the Fire Services Act 1947 s 17(2)-(4). In practice the Secretary of State consults the National Joint Council for Chief Officers and Assistant Chief Officers of Local Authorities' Fire Brigades and the National Joint Council for Local Authorities' Fire Brigades.

<sup>3</sup> See the Fire Services (Discipline) Regulations 1985, SI 1985/930, reg 4, Schedule.

## **UPDATE**

### **35-39 Fire brigade establishments ... Disciplinary offences**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **39 Disciplinary offences**

NOTE 2--1947 Act s 17 repealed: Fire and Rescue Services Act 2004 Sch 2.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(2) TERMS OF SERVICE/40. Suspension.

#### **40. Suspension.**

The powers of a chief officer to suspend a firefighter who has committed a disciplinary or criminal offence, and the rights of a firefighter while suspended, were formerly governed by statutory regulations<sup>1</sup> but are now governed by contractual conditions of service<sup>2</sup>.

1 See the Fire Services (Conditions of Service) Regulations 1954, SI 1954/1158, reg 9, Sch 6 (spent). Although concerned with disciplinary matters, these provisions do not seem to be provisions 'as to the maintenance of discipline' within the meaning of the Fire Services Act 1947 s 17(1)(c) (as amended) and, accordingly, lapsed with the amendment of s 17 by the Fire Services Act 1959 (see PARA 39 ante).

2 See PARA 38 ante.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(2) TERMS OF SERVICE/41. Disciplinary procedure.

#### **41. Disciplinary procedure.**

Where a report or allegation is received from which it appears that a member of a fire brigade may have committed an offence, the matter must be referred to an officer nominated by the chief officer or, in the case of a principal officer, by the fire authority (referred to as 'the investigating officer'), who must cause it to be investigated<sup>1</sup>.

Where from a preliminary investigation of the report or allegation (which must include giving the member an opportunity to explain his conduct and hearing his explanation, if any), the investigating officer is of the opinion (1) that commission of the offence by that member is established and the offence is of so serious a nature as to be capable of being punished only by dismissal; and (2) that no further investigation of the matter is called for, he must report accordingly to the chief officer or, in the case of a principal officer, the fire authority, who may dismiss the member forthwith<sup>2</sup>. However, no member may be so dismissed unless he has been given the opportunity, either personally or through another member of a brigade, to explain his conduct to the chief officer or, as the case may be, the fire authority<sup>3</sup>. Where a member is accordingly given an opportunity to explain his conduct to the investigating officer, the chief officer or the fire authority, he must be informed that he is not obliged to say anything concerning the matter, and warned that any explanation he does make may be used in any subsequent disciplinary proceedings<sup>4</sup>. If the chief officer or, as the case may be, the fire authority on receiving such a report from the investigating officer, or after hearing the member's explanation, considers that commission of the offence by him is not sufficiently established or would not merit dismissal the case must be remitted to the investigating officer for further investigation and, if necessary, further action<sup>5</sup>.

The investigating officer must, save in the case of a preliminary investigation<sup>6</sup>, as soon as possible, without prejudicing his or any other investigation of the matter, inform the member in writing that he is the subject of an investigation, give him an opportunity to make a statement in reply, and warn him that he is not obliged to make a statement but that any statement he does make in reply may be used in any subsequent disciplinary proceedings<sup>7</sup>.

On completion of an investigation other than a preliminary investigation<sup>8</sup>, the investigating officer must decide whether the member should be charged with an offence<sup>9</sup> and if the investigating officer decides that the member should not be charged with an offence he must so inform the member in writing, as soon as possible<sup>10</sup>. If the investigating officer decides that the member is to be charged with an offence he must, as soon as possible, charge the member in writing setting out the offence with which the member is charged together with such particulars as will clearly show the precise nature of the alleged offence<sup>11</sup> and give him, as soon as possible, copies of any report or allegation on which the charge may be founded and any reports or statements made to the investigating officer in relation to the charge, notwithstanding that they may be confidential<sup>12</sup>.

Except where otherwise provided<sup>13</sup>, where a member of a fire brigade has been charged with an offence<sup>14</sup> the case must be heard, as the chief officer may determine, by the chief officer or the disciplinary tribunal of the fire authority, that is to say, a committee of the fire authority designated as such by the authority or a sub-committee of such a committee<sup>15</sup>. A case must be heard by the disciplinary tribunal of the fire authority if either the member is a principal officer or the case is of a class or description which the fire authority has directed should be so heard<sup>16</sup>. Where, in the case of a member who is not a principal officer, the investigating officer is of the view that the nature of the alleged offence is such that it is unlikely to merit greater punishment than a reprimand he must so inform the chief officer, who must nominate another

officer to conduct the hearing<sup>17</sup>. The chief officer (where a case falls to be heard by him) or the fire authority (where a case falls to be heard by its disciplinary tribunal) may appoint not more than two persons to act as assessors at the hearing<sup>18</sup>. The chief officer, where the case falls to be heard by him, may at any time before the case is concluded remit the case to the disciplinary tribunal for hearing or re-hearing<sup>19</sup>. An officer nominated by the chief officer to conduct the hearing<sup>20</sup> may at any time before the case is concluded remit the case to the chief officer for hearing or re-hearing<sup>21</sup>.

At the conclusion of the hearing of the case, the disciplinary body must either find the charge proved or dismiss the case<sup>22</sup>. If the disciplinary body finds the charge proved it must award a disciplinary award<sup>23</sup>.

1 Fire Services (Discipline) Regulations 1985, SI 1985/930, reg 5(1). For the meaning of 'principal officer' see reg 3(2).

2 Ibid reg 6(1). For the meaning of 'fire authority' see PARA 17 ante.

3 Ibid reg 6(1) proviso.

4 Ibid reg 6(2).

5 Ibid reg 6(3). The reference in the text to further action is to action under reg 8 (see the text and notes 9-12 infra); reg 6(3). A member who has been dismissed under reg 6 is entitled to appeal against the dismissal as if he had been dismissed after a hearing under reg 9 (see the text and notes 13-21 infra); reg 6(4).

6 Ie under ibid reg 6(1): see the text and notes 2-3 supra.

7 Ibid reg 7.

8 See the text and notes 2-3 supra.

9 Fire Services (Discipline) Regulations 1985, SI 1985/930, reg 8(1).

10 Ibid reg 8(2).

11 Ibid reg 8(3).

12 Ibid reg 8(4).

13 Ie except where provided in ibid reg 9(2), (3): see the text and notes 16-17 infra.

14 Ie an offence under ibid reg 8(3): see the text and note 11 supra.

15 Ibid reg 9(1). In proceedings before a disciplinary tribunal, the appropriate standard of proof is the civil standard: *R v Hampshire County Council, ex p Ellerton* [1985] 1 All ER 599, CA.

16 Fire Services (Discipline) Regulations 1985, SI 1985/930, reg 9(2).

17 Ibid reg 9(3).

18 Ibid reg 9(4).

19 Ibid reg 9(5).

20 Ie under ibid reg 9(3): see the text and note 17 supra.

21 Ibid reg 9(6).

22 Ibid reg 10(1).

23 Ibid reg 10(2). The reference in the text to a disciplinary award is to one set out in reg 11 (see PARA 42 post); reg 10(2). Regulation 10(2) is subject to regs 11-18 (see PARAS 42-43 post); reg 10(2).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(2) TERMS OF SERVICE/42. Disciplinary awards.

## **42. Disciplinary awards.**

As soon as possible after the disciplinary body has made a decision<sup>1</sup>, the accused must be notified in writing of that decision<sup>2</sup>.

Where a charge is found to be proved, one of the following disciplinary awards must be imposed:

- 33 (1) dismissal<sup>3</sup>;
- 34 (2) requirement to resign from the brigade at the date when the award takes effect or such later date as may be specified in the award<sup>4</sup>;
- 35 (3) reduction in rank<sup>5</sup>;
- 36 (4) stoppage of pay or, in the case of a retained firefighter, retaining fee<sup>6</sup>;
- 37 (5) a reprimand<sup>7</sup>;
- 38 (6) a caution<sup>8</sup>.

Separate awards must be imposed for separate offences<sup>9</sup>.

An officer nominated to conduct a hearing<sup>10</sup> may only impose a reprimand or a caution<sup>11</sup>. Where a member has been required to resign from the brigade and he has not resigned at the date specified in the award he is deemed to have been dismissed on that date<sup>12</sup>. A stoppage of pay or retaining fee in respect of any one offence must not continue after the expiration of 13 weeks from the date on which an award takes effect; and the amount of any stoppages (whether in respect of one or more offences) must not exceed in the aggregate, in any pay or fee period, one-seventh of the pay or fee of the member for that period as determined in relation to his rank<sup>13</sup>. Where a chief officer or a disciplinary tribunal, in deciding to impose a disciplinary award other than a caution, is of the opinion that any further offence by the accused might warrant his dismissal they are each under a duty to issue a warning to him to that effect<sup>14</sup>. Where such a warning is issued it is subject to an appeal<sup>15</sup> as if it were a disciplinary award<sup>16</sup>, save that any decision on such an appeal must be limited to allowing or dismissing the appeal<sup>17</sup>; and the right of appeal to the Secretary of State<sup>18</sup> is limited to those cases where the award imposed itself carries such a right of appeal<sup>19</sup>.

Where either a reprimand or a caution is imposed<sup>20</sup>, there is no right of appeal against either the finding or the award and the award takes effect on the date when imposed or such later date as may be specified in the award<sup>21</sup>. All other forms of disciplinary award<sup>22</sup> imposed do not take effect until the award has been confirmed on appeal<sup>23</sup> or the period for submitting notice of appeal<sup>24</sup> has expired<sup>25</sup>. Where a disciplinary award has been confirmed<sup>26</sup>, or the period for submitting notice of appeal<sup>27</sup> has expired without any such notice being submitted, the award takes effect forthwith or on such later date as may be specified in the award<sup>28</sup>.

1 le under the Fire Services (Discipline) Regulations 1985, SI 1985/930, reg 10(1) or reg 10(2): see PARA 41 ante.

2 Ibid reg 10(3). This provision is subject to reg 10(2) (see PARA 41 ante): reg 10(3).

3 Ibid reg 11(1)(a).

4 Ibid reg 11(1)(b).

5 Ibid reg 11(1)(c).

- 6 Ibid reg 11(1)(d).
- 7 Ibid reg 11(1)(e).
- 8 Ibid reg 11(1)(f).
- 9 Ibid reg 11(1).
- 10 Ie under ibid reg 9(3): see PARA 41 ante.
- 11 Ibid reg 11(2).
- 12 Ibid reg 11(3).
- 13 Ibid reg 11(4).
- 14 Ibid reg 11(5).
- 15 Ie under the Fire Services (Discipline) Regulations 1985, SI 1985/930: see PARA 43 post.
- 16 Ibid reg 11(5).
- 17 Ibid reg 11(5)(a).
- 18 Ie under ibid reg 15: see PARA 43 post. As to the Secretary of State see PARA 10 ante.
- 19 Ibid reg 11(5)(b).
- 20 Ie under ibid reg 11(1)(e) or reg 11(1)(f): see the text and notes 7-8 supra.
- 21 Ibid reg 11(6).
- 22 Ie those imposed by ibid reg 11(1)(a)-(d): see the text and notes 3-6 supra.
- 23 Ibid reg 11(7)(a). See also note 28 infra. The reference in the text to an appeal is to one under reg 12 or reg 13: see PARA 43 post.
- 24 Ie under ibid reg 12 or reg 13: see PARA 43 post.
- 25 Ibid reg 11(7)(b). See also note 28 infra.
- 26 Ie as mentioned in ibid reg 11(7)(a): see text and notes 22-23 supra.
- 27 Ie the period referred to in ibid reg 11(7)(b): see the text and notes 22-25 supra.
- 28 Ibid reg 11(8). The provisions of reg 11(7), (8) do not apply in the case of a dismissal under reg 6: reg 11(9).

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### **43. Disciplinary appeals.**

Where the case has been heard by the chief officer in the first instance or on remission to the chief officer<sup>1</sup> and an award other than a reprimand or caution has been imposed, or where the chief officer has summarily dismissed a member of a brigade<sup>2</sup>, the accused may, within seven days of being notified that such an award has been imposed, submit to the chief officer written notice of appeal<sup>3</sup>. An appeal<sup>4</sup> is heard by the disciplinary tribunal of the fire authority<sup>5</sup> and is by way of a re-hearing<sup>6</sup>. However, where the appeal is against the award alone and a transcript of the original hearing is available the disciplinary tribunal may, if it thinks fit, and with the consent of both parties, decide the appeal without a re-hearing<sup>7</sup>. The disciplinary tribunal may allow the appeal, confirm the award or vary the award by the imposition of some other award<sup>8</sup>. Where the disciplinary tribunal allows the appeal or varies the award<sup>9</sup>, its decision is substituted for the decision appealed against and any award which it imposes takes effect from the date of the appeal decision or such later date as may be specified in the award<sup>10</sup>. The decision of the disciplinary tribunal must as soon as possible after it has been taken be notified in writing to the accused<sup>11</sup>.

Where the case has been heard by the disciplinary tribunal in the first instance or on remission<sup>12</sup> and an award other than a reprimand or caution imposed, or where a fire authority has summarily dismissed a principal officer<sup>13</sup>, the member concerned may within seven days of being notified that such an award has been imposed submit to the disciplinary tribunal written notice of appeal<sup>14</sup>. An appeal<sup>15</sup> is heard by a committee of the fire authority (referred to as 'the appeal committee') none of whose members are to be members of the disciplinary tribunal<sup>16</sup>.

At the hearing of a case before the chief officer or an officer nominated by the chief officer, the accused is entitled to have the assistance in presenting his defence of a person selected by himself who must be a member of a fire brigade<sup>17</sup>, provided that the person so selected is not of a rank equal or superior to that of the officer hearing the case at first instance<sup>18</sup>. At the hearing of a case before the fire authority or at any appeal before the disciplinary tribunal or appeal committee the accused is entitled to the assistance in presenting his appeal of a person selected by himself, who need not be a member of a fire brigade<sup>19</sup>.

Where on appeal the disciplinary tribunal or the appeal committee has decided to impose or, as the case may be, confirm an award other than a stoppage of pay or a retaining fee, a reprimand or a caution<sup>20</sup>, the accused may appeal in writing to the Secretary of State<sup>21</sup> within 14 days of receiving written notice of such decision or such longer period as the Secretary of State may allow<sup>22</sup>. A statement of the grounds of appeal must be submitted by the accused with the written notice of appeal within 50 days, or such longer period as the Secretary of State may allow in any particular case, of receiving written notice of the decision of the disciplinary tribunal or appeal committee, as the case may be<sup>23</sup>. If the accused fails to submit written grounds of appeal within the requisite period<sup>24</sup>, the Secretary of State is entitled to treat the notice of appeal as having been withdrawn<sup>25</sup>.

The Secretary of State may in any case appoint one or more persons to hold an inquiry and report to him and must do so where it appears to him that the case cannot properly be determined without hearing the evidence<sup>26</sup>. He may also appoint not more than two persons to act as assessors at the inquiry<sup>27</sup>. He may at any time remit the case for further consideration by the disciplinary tribunal of the fire authority or the appeal committee, or, if an inquiry has been held, for further investigation by the persons appointed to hold the inquiry<sup>28</sup>.



The Secretary of State may allow the appeal, or dismiss the appeal, or vary the award by the imposition of some other award appearing to him to be less severe<sup>29</sup>. If he allows the appeal or varies the award, his decision takes effect by way of substitution for the decision appealed against, and as from the date when the award took effect<sup>30</sup>. The decision of the Secretary of State must as soon as possible after it has been taken be notified in writing to the appellant and the fire authority against whom the appeal is made<sup>31</sup>.

- 1    Ie under the Fire Services (Discipline) Regulations 1985, SI 1985/930, reg 9(6): see PARA 485 ante.
- 2    Ie under ibid reg 6: see PARA 41 ante.
- 3    Ibid reg 12(1).
- 4    Ie under ibid reg 12: see reg 12(2).
- 5    Ibid reg 12(2). For the meaning of 'fire authority' see PARA 17 ante.
- 6    Ibid reg 12(3). Regulation 12(3) is subject to reg 12(4) (see the text and note 7 infra): reg 12(3). The provisions of reg 12(3), (4), (5), (6), (7) apply to an appeal under reg 13(1) (see the text and note 14 infra) as they apply to an appeal under reg 12(1) (see the text and note 3 supra): reg 13(3).
- 7    Ibid reg 12(4). See also note 6 supra.
- 8    Ibid reg 12(5). See also note 6 supra.
- 9    Ie under ibid reg 12(5): see the text and note 8 supra.
- 10   Ibid reg 12(6). See also note 6 supra.
- 11   Ibid reg 12(7). See also note 6 supra.
- 12   Ie under ibid reg 9(5): see PARA 41 ante.
- 13   Ie under ibid reg 6: see PARA 41 ante.
- 14   Ibid reg 13(1).
- 15   Ie under ibid reg 13: see reg 13(2).
- 16   Ibid reg 13(2).
- 17   Ibid reg 14(1).
- 18   Ibid reg 14(1) proviso.
- 19   Ibid reg 14(2).
- 20   Ie an award other than those specified in ibid reg 11(1)(d), (e) or (f): see PARA 42 ante.
- 21   As to the Secretary of State see PARA 10 ante.
- 22   Fire Services (Discipline) Regulations 1985, SI 1985/930, reg 15(1).
- 23   Ibid reg 15(2).
- 24   Ie the period referred to in ibid reg 15(2): see the text and note 23 supra.
- 25   Ibid reg 15(3).
- 26   Ibid reg 16(1).
- 27   Ibid reg 16(2).
- 28   Ibid reg 17.
- 29   Ibid reg 18(1).

30 Ibid reg 18(2).

31 Ibid reg 18(3).

## **UPDATE**

### **43 Disciplinary appeals**

NOTE 29--See *R (on the application of London Fire and Emergency Planning Authority) v Secretary of State for Communities and Local Government* [2007] EWHC 1176 (Admin), [2007] LGR 591.

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#### **44. Other judicial proceedings in discipline cases.**

It would appear that the High Court may make an order of certiorari<sup>1</sup> to quash a disciplinary decision, but that the court is reluctant to act<sup>2</sup> save where substantial injustice has been done and the firefighter has exhausted his rights of appeal to the fire authority and the Secretary of State<sup>3</sup>. At least where the question raised is one of the jurisdiction of the disciplinary authority the courts will grant a declaration or injunction to prevent an injustice<sup>4</sup>, but it would appear also that the court is reluctant to grant an injunction where the discipline case is continuing<sup>5</sup>.

A firefighter who is dismissed as a result of disciplinary proceedings is not precluded from complaining to an employment tribunal for unfair dismissal<sup>6</sup>, and the tribunal will give due consideration to those disciplinary proceedings and their outcome in reaching a decision<sup>7</sup>.

1 As to certiorari see JUDICIAL REVIEW vol 61 (2010) PARA 693 et seq.

2 Where a person whose duty it is to act in matters of discipline is exercising disciplinary powers, it is most undesirable that he should be fettered by threats of orders of certiorari because that interferes with the free and proper exercise of the powers which he has: see *R v Metropolitan Police Comr, ex p Parker* [1953] 2 All ER 717 at 721, [1953] 1 WLR 1150 at 1155, DC, per Lord Goddard CJ.

3 *Ex p Fry* [1954] 2 All ER 118, [1954] 1 WLR 730, CA, a case concerned with the disciplinary decision of a chief officer. In the divisional court Lord Goddard CJ held that a chief officer (like a schoolmaster) administers discipline but does not sit as a court or act either judicially or quasi-judicially and that the court should not interfere, by way of an order of certiorari, with the discipline of police forces, fire brigades or similar bodies which, in their nature, are disciplined bodies when the chief officer is simply acting as an officer in the matter of discipline. The applicant appealed and in the Court of Appeal Singleton LJ, though not allowing the appeal, preferred to base his decision not on the ground that the court could not interfere by way of an order of certiorari but on the narrower ground that the remedy sought was discretionary, that the appellant had not behaved sensibly in refusing to obey the order which was the subject matter of the disciplinary proceedings, and that the circumstances of the case were such that the application should be dismissed. See, however, *M'Donald v Lanarkshire Fire Brigade Joint Committee* 1959 SC 141.

4 See *Cooper v Wilson* [1937] 2 KB 309, [1937] 2 All ER 726, CA; *Barnard v National Dock Labour Board* [1953] 2 QB 18, [1953] 1 All ER 1113, CA; and JUDICIAL REVIEW vol 61 (2010) PARA 716 et seq.

5 See *Buckoke v Greater London Council* [1971] Ch 655 at 675, [1971] 2 All ER 254 at 264, CA, per Sachs LJ.

6 See the Employment Rights Act 1996 Pt X (ss 94-134) (as amended); and EMPLOYMENT vol 40 (2009) PARA 713.

7 As to how the tribunal's decision is to be made see *Mitchell v Cornwall County Council* (10 March 1976, unreported) Industrial Tribunal Case no 545/76 (following *AJ Dunning & Sons (Shop Fitters) Ltd v Jacomb* (1973) 8 ITR 453 at 456, NIRC); *James v Waltham Holy Cross UDC* (1973) 8 ITR 467 at 472, NIRC.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(3) PENSIONS/45. Power to make pension schemes.

### **(3) PENSIONS**

#### **45. Power to make pension schemes.**

The Secretary of State<sup>1</sup> may, with the approval of the Treasury and after consultation with the Central Fire Brigades Advisory Council<sup>2</sup>, by order bring into operation a scheme, to be known as the Firemen's Pension Scheme<sup>3</sup>, which provides for the payment by fire authorities and such other authorities as may be specified in the scheme of pensions, allowances and gratuities to persons employed as members of fire brigades<sup>4</sup> who retire from such employment or die while so employed, and to their widows, children and dependants<sup>5</sup>. The scheme may include provision as to the times at which and the circumstances in which members of fire brigades maintained in pursuance of the Fire Services Act 1947 are or may be required to retire otherwise than on the ground of misconduct<sup>6</sup>.

Successive schemes have been brought into operation under this power, each replacing its predecessor<sup>7</sup>. The current scheme has effect in the place of the arrangements<sup>8</sup> for persons who were treated as members of the former brigade<sup>9</sup> subject to such modifications as would be, on the whole, not less favourable than the scheme not so modified<sup>10</sup>. For these purposes, the question whether a person remains a member of the same fire brigade is determined as if he continued to be employed as a member of that brigade during any temporary employment which is treated for the purposes of the scheme as employment as a member of a brigade<sup>11</sup>. Subject to the provisions of the Fire Services Act 1947<sup>12</sup> the Firemen's Pension Scheme may provide that in relation to persons of such classes as may be prescribed by the scheme, being persons to whom awards may be made under it in respect of any employment, the provisions of the scheme are to have effect to the exclusion of any provision for pension, allowance or gratuity in respect of that employment contained in or in force under any other enactment<sup>13</sup>.

1 As to the Secretary of State see PARA 10 ante.

2 Fire Services Act 1947 s 26(6). As to the Central Fire Brigades Advisory Council see PARA 12 ante.

3 As to the Firemen's Pension Scheme see PARA 46 et seq post.

4 I.e. fire brigades maintained in pursuance of the Fire Services Act 1947. As to fire brigades see PARA 35 et seq ante.

5 Ibid s 26(1). The scheme may be varied by subsequent order of the Secretary of State (s 26(5)) or may be revoked and a fresh scheme brought into operation (Fire Services Act 1951 s 1(1)), in which case all references to the scheme include references to the new scheme (s 1(2)). As to the provisions which may be made see PARA 46 post. The power to make an order varying the scheme includes power to vary the conditions subject to which or the time during which any pension, allowance or gratuity is payable under the scheme to or in respect of persons ceasing before the coming into operation of the order to be employed as members of fire brigades, or in employment which under the scheme is treated as if it were employment as such a member: Fire Services Act 1959 s 8(2). Any scheme made under the Fire Services Act 1947 s 26 (as amended) may include provision for the payment by a fire authority or the Secretary of State of transfer values as respects persons who transfer or have transferred from employment in respect of which awards may be made under the scheme to such other employment as may be specified in the scheme: Superannuation Act 1972 s 16(1). See also PARA 51 post. As to retrospective provisions see s 16(3), applying s 12(1), (2) (as amended), (4) (as amended), (5) to an order under the Fire Services Act 1947 s 26.

6 See the Fire Services Act 1959 s 8(1). As to retirement under the scheme see PARA 47 post.

7 Every order bringing a scheme into force is called the Firemen's Pension Scheme Order: see eg SI 1948/604; SI 1952/944; SI 1956/1022; SI 1964/1148; SI 1966/1045; SI 1971/145; SI 1973/966. As to the current scheme see PARA 46 et seq post.

8 le arrangements for the grant of pensions, allowances or gratuities: see the Fire Services Act 1947 s 27(2)(a).

9 le a fire brigade maintained in pursuance of the Fire Brigades Act 1938 (repealed): see the Fire Services Act 1947 s 27(2)(a).

10 See ibid s 27 (amended by the Fire Services Act 1951 s 2; the Social Security Act 1973 ss 100, 101, Sch 28 Pt I; and the Statute Law (Repeals) Act 1989).

11 See the Fire Services Act 1959 s 8(4). See also PARA 47 post.

12 le subject to the Fire Services Act 1947 s 27 (as amended): see the text and notes 8-10 supra.

13 Fire Services Act 1951 s 2(1). Nothing in s 2(1) affects the operation of the enactments relating to social security, but the scheme may provide for the reduction or withholding of awards under the scheme where, in respect of the same matters, benefit is payable under those enactments and awards may be made under the scheme: s 2(4) (substituted by the Social Security Act 1973 s 100, Sch 27 para 15; and amended by the Social Security (Consequential Provisions) Act 1975 s 1(2), Sch 1 Pt 1). Any increase attributable to the provisions of the Fire Services Act 1951 in the sums payable out of moneys provided by Parliament under any other enactment are payable out of such moneys, and any receipts of the Secretary of State under the Fire Services Act 1947 are to be paid to the Exchequer: see the Fire Services Act 1951 s 3.

## **UPDATE**

### **45-58 Pensions**

Firemen's Pension Scheme continued in force and renamed the Firefighters' Pension Scheme or, in Wales, the Firefighters' Pension (Wales) Scheme: see the Firefighters' Pension Scheme (England and Scotland) Order 2004, SI 2004/2306; and the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004, SI 2004/2918. In relation to England, the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In relation to Wales, the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1 (Sch 1 amended by SI 2009/1225).

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **45 Power to make pension schemes**

TEXT AND NOTES--1947, 1951 and 1959 Acts replaced by the Fire and Rescue Services Act 2004.

The Secretary of State or, in relation to Wales, the National Assembly for Wales may, after consulting any persons he considers appropriate, by order bring into operation one or more schemes making provision for the payment of pensions, allowances and gratuities to or in respect of persons who are or have been employed by a fire and rescue authority or persons who die or have died while so employed: s 34(1), (5). An order under s 34 may take effect from a date which is earlier than that on which the order is made, and may vary or revoke a scheme brought into operation by an order under s 34: s 34(3), (4). As to orders made under the 2004 Act see PARA 10.

The Secretary of State or the Assembly may by order provide for the scheme established under the 1947 Act s 26 (as amended by Civil Partnership Act 2004 Sch 25 para 1) to continue in force despite the repeal of the 1947 Act s 26, and may in particular make new provision for the name of the scheme: 2004 Act s 36(1), (3). An order under s 36 may provide for any enactment amended or repealed by the 2004 Act to continue in effect in relation to that scheme unmodified or with any modifications specified in the order: s 36(2). Section 36 does not affect any other power in the 2004 Act to make transitional or transitory provision: s 36(4).

NOTE 5--1972 Act s 16 repealed: 2004 Act Sch 2.

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#### **46. The Firemen's Pension Scheme.**

The current scheme is the Firemen's Pension Scheme 1992<sup>1</sup>. It is a contributory unfunded scheme containing provisions broadly similar to those of other public sector superannuation arrangements, and includes provisions for the preservation of pension rights on transfer in or out of the fire service. It differs from the generality of public sector arrangements by providing for a full pension after 30 years of pensionable service, instead of the usual 40 years<sup>2</sup>; and the normal age of compulsory retirement, for a whole-time member required to engage in fire-fighting, is 55, except in the case of a member of the rank of assistant divisional officer or higher, when it is 60<sup>3</sup>.

The Secretary of State<sup>4</sup> has power to make provision in the scheme for:

- 39 (1) defining the classes of persons in respect of whose service awards, or awards of any class specified in the scheme, may be made, and in particular for excluding in relation to any such awards or class of awards persons not wholly and permanently employed as members of a fire brigade or who are employed on such ancillary duties as may be specified in the scheme and for treating employment in connection with the provision of fire services otherwise than as a member of a fire brigade or the undertaking of specific service or instruction by entitled persons, as if it were employment as a member of such a fire brigade<sup>5</sup>;
- 40 (2) reckoning, for all or any purposes of the scheme, such employment as may be specified (other than employment as a member of a fire brigade) as if it were employment as a member of such a brigade<sup>6</sup>;
- 41 (3) the making of such contributions as may be specified by the scheme<sup>7</sup>;
- 42 (4) the making of payments to a fire authority in respect of new employees regarding any pension entitlement arising from their previous service<sup>8</sup> and the reimbursement of such payments out of the superannuation fund to which contributions have been made in respect of such previous service<sup>9</sup>, or the making of payments out of the fund where contributions have been made in respect of previous service with the same authority<sup>10</sup>;
- 43 (5) the payment and receipt by fire authorities of transfer values or other lump sum payments made for the purpose of creating or restoring rights to pensions, allowances and gratuities<sup>11</sup>;
- 44 (6) conditions as to evidence or otherwise subject to which an award may be made, the manner in which any question is determined and appeals from the determinations of any such question<sup>12</sup>;
- 45 (7) excluding or modifying rights to compensation or damages where awards have been made for injuries<sup>13</sup>;
- 46 (8) such incidental and supplementary matters as appear expedient for the purposes of the scheme<sup>14</sup>; and
- 47 (9) enabling the scheme to comply with the statutory requirements relating to preservation of benefit under a pension scheme<sup>15</sup>.

1 The Firemen's Pension Scheme 1992 is set out in the Firemen's Pension Scheme Order 1992, SI 1992/129, art 2(2), Sch 2 (amended by SI 1997/2309; SI 1997/2851; and SI 1998/1010).

2 Firemen's Pension Scheme 1992 r B1, Sch 2 Pt 1.

3 Ibid r A13(2). In special circumstances the fire authority may extend service beyond this age in the interests of efficiency: see r A13(3). As to fire authorities see PARA 17 et seq ante.

4 As to the Secretary of State see PARA 10 ante. The Secretary of State also has power to vary the scheme by subsequent order: see the Fire Services Act 1947 s 26(5).

5 See ibid s 26(2)(a), (aa) (added by the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 s 42); and PARA 47 post. The reference in the text to specific service is to service of a description specified in the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 ss 42, 44, 52, 63, 64 (all as amended), Sch 1; and the reference in the text to instruction is to hourly instruction as defined in s 42 (as amended) (see ARMED FORCES): see the Fire Services Act 1947 s 26(2)(aa) (as so added). See also PARA 47 note 4 post. The Secretary of State may also make provision for substituting himself for a fire authority in relation to any employment which is treated for the purposes of the scheme as if it were employment as a member of a fire brigade: see s 26(2)(d) (amended by the Fire Services Act 1951 s 1(3)); and PARA 47 notes 3-4 post.

6 See the Fire Services Act 1947 s 26(2)(b); and PARA 47 post.

7 See ibid s 26(2)(c); and PARA 51 post. Any provision included in the scheme by virtue of s 26(2)(c) may be so made as to extend to sums in respect of contributions made otherwise than under the scheme during employment which under the scheme is reckoned as if it were employment as a member of a fire brigade: Fire Services Act 1959 s 8(3). See also PARA 47 post.

8 See the Fire Services Act 1947 s 26(2)(e); and PARA 51 post.

9 See ibid s 26(2)(f); and PARA 51 post.

10 See ibid s 26(2)(g); and PARA 51 post.

11 See ibid s 26(2)(ga) (added by the Police and Firemen's Pensions Act 1997 s 1(3)); and PARA 51 post.

12 See the Fire Services Act 1947 s 26(2)(h); and PARA 52 post.

13 See ibid s 26(2)(i). At the date at which this volume states the law the power referred to in head (7) in the text had not been exercised. No provision made by virtue of s 26(2)(i) affects any right under the enactments relating to social security: s 26(2)(i). As to the enactments relating to social security see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARAS 1-6.

14 See ibid s 26(2)(j).

15 See ibid s 26(2A) (added by SI 1976/551). The statutory requirements referred to in the text are those set out in the Pension Schemes Act 1993 ss 70-76, 82, 153(2), 165(6) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARAS 931-937); Fire Services Act 1947 s 26(2A) (as so added); Interpretation Act 1978 s 17(2)(a).

## **UPDATE**

### **45-58 Pensions**

Firemen's Pension Scheme continued in force and renamed the Firefighters' Pension Scheme or, in Wales, the Firefighters' Pension (Wales) Scheme: see the Firefighters' Pension Scheme (England and Scotland) Order 2004, SI 2004/2306; and the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004, SI 2004/2918. In relation to England, the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In relation to Wales, the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1 (Sch 1 amended by SI 2009/1225).

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **46 The [Firefighters'] Pension Scheme**



TEXT AND NOTES--The current scheme is now the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213) and the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1. A person of any of the following descriptions is a firefighter member of the new scheme (1) a person who, on or after 6 April 2006, takes up employment with an authority as a firefighter, and whose role on taking up that employment includes (a) resolving operational incidents; or (b) leading and supporting others in the resolution of operational incidents; (2) a person who having taken up employment as a firefighter before 6 April 2006, having continued in such employment until the date of his election (and, in Wales, having been a member of the 1992 Scheme), elects to become a member of the new scheme; and (3) a person to whom SI 2006/3432 art 3(3), or, in the case of Wales, SI 2007/1072 art 3(3), refers (persons becoming members of the 1992 Scheme on taking up employment with an authority on or after 6 April 2006 and before SI 2006/3432, or, in the case of Wales, SI 2007/1072, comes into force): New Firefighters' Pension Scheme (England) Pt 2 r 1(1) (as amended) and New Firefighters' Pension Scheme (Wales) Pt 2 r 1(1). Under the new scheme, an ordinary pension is calculated by multiplying a member's pensionable service by his final pensionable pay and dividing the resulting amount by 60: see SI 2006/3432 Pt 3 r 1(4); SI 2007/1072 Pt 3 r 1(4). The pensionable service of a firefighter member may now not exceed 45 years: SI 2006/3432 Pt 10 r 2(2); SI 2007/1072 Pt 10 r 2(2). The normal retirement age of firefighter members under the new scheme is 60; and the normal benefit age of firefighter members is 65: SI 2006/3432 Pt 2 r 3; SI 2007/1072 Pt 2 r 3.

For new provision regarding the entitlement to a pension of a pension credit member see PARA 53A.

NOTE 1--SI 1992/129 further amended: SI 2001/3649, SI 2001/3691, SI 2004/1912, SI 2005/2980 (England), SI 2005/3228 (England), SI 2006/1672 (Wales), SI 2006/1810 (England), SI 2006/3433 (England), SI 2007/1074 (Wales), SI 2008/214 (England), SI 2009/1226 (Wales).

NOTE 2--SI 1992/129 r B1 amended: SI 2005/2980 (England), SI 2006/1672 (Wales).

TEXT AND NOTE 3--Replaced. The normal pension age of employees of a fire and rescue authority appointed on terms under which they are or may be required to engage in fire-fighting is 55: SI 1992/129 r A13 (substituted by SI 2005/2980 (England), SI 2006/1672 (Wales)).

TEXT AND NOTES 4-15--1947 and 1959 Acts replaced by the Fire and Rescue Services Act 2004.

A scheme brought into operation under s 34 may in particular (1) provide for the classes of person in respect of whose service awards may be made; (2) provide for treating employment that is not employment by a fire and rescue authority as if it were such employment for any purpose of the scheme, to the extent specified in the scheme and subject to any conditions specified in the scheme; (3) provide for the making of contributions by employers and by persons in respect of whose service awards may be made; (4) provide for the repayment of any such contributions or their application for the benefit of persons of a specified description; (5) provide for the making of payments by the Secretary of State or the National Assembly for Wales and fire and rescue authorities into a fund to which contributions have been made under the scheme; (6) provide for the making of payments to the Secretary of State or the Assembly out of a fund to which contributions have been made under the scheme; (7) provide for substituting the Secretary of State or the Assembly for a fire and rescue

authority, for any purpose of the scheme; (8) provide for the making to a fire and rescue authority or the Secretary of State or the Assembly of payments in respect of a person's previous service, including provision for such payments to be made by the Secretary of State or the Assembly; (9) provide for any such payments to be reimbursed out of a fund to which contributions have been made in respect of the previous service to which the payments related; (10) provide for the payment and receipt by fire and rescue authorities of transfer values or of other lump sum payments made for the purpose of creating or restoring rights to pensions, allowances and gratuities; (11) provide for conditions subject to which an award under the scheme may be made, for the manner in which questions arising under the scheme are to be determined and for appeals from determinations of such questions; (12) provide for excluding or modifying rights to compensation or damages in respect of injuries, in cases where awards are made under the scheme in respect of the injuries; (13) make incidental, supplemental, consequential and transitional provision: s 34(2). See the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213); and the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(3) PENSIONS/47. General provisions and retirement.

#### **47. General provisions and retirement.**

The Firemen's Pension Scheme<sup>1</sup> makes provision for the application of the scheme exclusively to regular firefighters, their spouses and dependants<sup>2</sup>, as well as to those who have ceased to perform duties as a regular firefighter and are employed in connection with fire services as instructors<sup>3</sup> or are temporarily employed either as instructors or inspectors or in connection with training members of the armed forces or fire-fighting forces outside the United Kingdom<sup>4</sup>. It excludes auxiliary firefighters from the scheme<sup>5</sup>. Other members of brigades are subject to the general provisions for the superannuation of local government employees<sup>6</sup>.

For the purposes of calculating awards, the scheme provides for the calculation of the period of reckonable service<sup>7</sup> and aggregate pension contributions<sup>8</sup> and specifies when an injury received by a person in the exercise of his duties as a regular firefighter<sup>9</sup>, or a disablement<sup>10</sup> or death or infirmity resulting from injury<sup>11</sup> will entitle a regular firefighter to a personal award<sup>12</sup>; and specifies the circumstances when retirement is compulsory on account of age<sup>13</sup> or on the grounds of efficiency of the brigade<sup>14</sup> or disablement<sup>15</sup>; and specifies the effective date of retirement<sup>16</sup>.

There are also provisions regarding relevant service in the armed forces<sup>17</sup>.

1 The Firemen's Pension Scheme 1992 is set out in the Firemen's Pension Scheme Order 1992, SI 1992/129, art 2(2), Sch 2 (as amended: see PARA 46 note 1 ante).

2 See the Firemen's Pension Scheme 1992 r A3(1). The scheme applies in relation to regular firefighters to the exclusion of pension provision under any enactment other than the Fire Services Act 1947 s 26 and the Social Security Act 1975 (repealed: see now the Social Security Contributions and Benefits Act 1992 and the Social Security Administration Act 1992; and SOCIAL SECURITY AND PENSIONS): Firemen's Pension Scheme 1992 r A3(1). 'Regular firefighter' in relation to any time before 1 March 1992 means a regular fireman (as defined in the Firemen's Pension Scheme 1973 art 2 (revoked) (see PARA 45 note 7 ante)) and in relation to any time after 29 February 1992 means a whole-time member of a brigade appointed on terms under which he is or may be required to engage in fire-fighting whose appointment is not a temporary one: Firemen's Pension Scheme 1992 r A2, Sch 1 Pt 1. A retained firefighter, ie a part-time firefighter with other employment, is not a whole-time firefighter for pension purposes: *Suffolk County Council v Secretary of State for the Environment* [1984] ICR 882, HL (decided under the Firemen's Pension Scheme 1973). A person who is not a member of a brigade but whose employment is, under the Firemen's Pension Scheme 1992 r A4 (see note 4 infra) or r A5 (see note 3 infra) treated as employment as a regular firefighter is not a regular firefighter for the purposes of r A3: r A3(3).

3 See *ibid* r A5. Where this rule applies the person's relevant employment is treated for the purposes of the scheme as employment as a member of a brigade and the scheme applies in relation to the relevant employment as if he were, and his duties were, as a regular firefighter and as if any reference to a fire authority were a reference to the Secretary of State: see r A5(3)(a), (c). As to the Secretary of State see PARA 10 ante.

4 See *ibid* r A4. Where this rule applies the person's relevant employment is treated for the purposes of the scheme as employment as a member of a brigade and the scheme applies in relation to the relevant employment as if he were, and his duties were, as a regular firefighter and as if any reference to a fire authority were a reference to the Secretary of State: see r A4(3)(a), (e). 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. For the meaning of 'Great Britain' see PARA 3 note 2 ante. Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 3.

5 See the Firemen's Pension Scheme 1992 r A6. The reference in the text to an auxiliary firefighter is to a member of a brigade who is enrolled for service in the brigade which is restricted, except in a war emergency, to such duties as are desirable for training: r A6. As to special cases under the scheme see PARA 54 post. As to contracting-out by firefighters see the Contracted-out Employment (Fire Services) Regulations 1977, SI 1977/1118; and SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 877 et seq.

6 See the Superannuation Act 1972 s 7; the Local Government Pension Scheme Regulations 1997, SI 1997/1612, reg 4(1)-(3), Sch 2 (as amended); and SOCIAL SECURITY AND PENSIONS. The power to make rules under the Superannuation (Miscellaneous Provisions) Act 1948 s 2 (as amended) (which enables provision to be made with respect to pensions payable to or in respect of persons ceasing to be employed in certain employments and becoming employed in certain other employments) is extended to cases where the conditions of s 2 (as amended) are not satisfied but where persons who were employed in the National Fire Service became employed in pensionable employment of one of the classes specified in s 2(2) or both employments are pensionable employments and one of them is employment in respect of which awards may be made under the Firemen's Pension Scheme: see the Fire Services Act 1959 s 9. There are also regulations which apply in the case of a person who, ceasing to be a regular firefighter in order to enter on pensionable employment under a local authority, is not granted an award other than a gratuity or award by way of return of contributions under the scheme and enters on pensionable employment: see the Fire Services (Pensionable Employment) Regulations 1958, SI 1958/640. As to the National Fire Service see PARA 1 ante.

7 See the Firemen's Pension Scheme 1992 r A7.

8 See *ibid* r A8.

9 See *ibid* r A9.

10 See *ibid* r A10. Fire-fighting is the essential duty of the regular firefighter and incapacity to perform that duty meant that a regular firefighter was disabled within the pension scheme rules: *R v West Yorkshire Fire and Civil Defence Authority, ex p McCalman* (2000) Times, 18 July, CA.

11 See the Firemen's Pension Scheme 1992 r A11.

12 See PARA 49 post.

13 See the Firemen's Pension Scheme 1992 r A13.

14 See *ibid* r A14.

15 See *ibid* r A15.

16 See *ibid* r A16.

17 See *ibid* r A12.

## UPDATE

### 45-58 Pensions

Firemen's Pension Scheme continued in force and renamed the Firefighters' Pension Scheme or, in Wales, the Firefighters' Pension (Wales) Scheme: see the Firefighters' Pension Scheme (England and Scotland) Order 2004, SI 2004/2306; and the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004, SI 2004/2918. In relation to England, the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In relation to Wales, the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1 (Sch 1 amended by SI 2009/1225).

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### 47 General provisions and retirement

TEXT AND NOTES--The 1992 scheme ceases to apply in relation to (1) a person who takes up employment with a fire and rescue authority on or after 6 April 2006; (2) a person who, having made an election under SI 1992/129 r G3(1) (see PARA 51) not to pay

pension contributions, cancels that election on or after 6 April 2006; and (3) the spouse, civil partner, eligible child or other dependant of such a person, on the day on which a scheme, other than the Firefighters' Compensation Scheme (England) 2006 set out in the Firefighters' Compensation Scheme (England) Order 2006, SI 2006/1811, Schedule (amended by SI 2006/3434), or, in relation to Wales, the Firefighters' Compensation Scheme (Wales) 2007 set out in the Firefighters' Compensation Scheme (Wales) Order 2007, SI 2007/1073, Schedule, is brought into operation under the Fire and Rescue Services Act 2004 s 34: SI 1992/129 r A3(5) (added by SI 2006/1810 (England), SI 2007/1074 (Wales)).

In relation to England, the current scheme is now the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213), and, in relation to Wales, the current scheme is now the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1. The new scheme is open to retained and volunteer firefighters as well as regular firefighters (see the New Firefighters' Pension Scheme (England) Pt 2 r 1 and the New Firefighters' Pension Scheme (Wales) Pt 2 r 1; and PARA 46); and pensions can be paid to a nominated partner as well as a spouse or civil partner (see SI 2006/3432 Pt 4 r 1, SI 2007/1072 Pt 4 r 1).

TEXT AND NOTE 2--The 1992 scheme also applies in relation to civil partners: SI 1992/129 r A3(1) (amended by SI 2005/3228 (England), SI 2006/1672 (Wales), SI 2006/1810 (England), SI 2007/1074 (Wales)).

NOTE 2--Nothing in SI 1992/129 r A3 prevents provision being made in respect of pension credit members: r A3(4) (added by SI 2001/3691). For the words 'a member of a brigade' substitute 'an employee of a fire and rescue authority': SI 1992/129 r A3(3) (amended by SI 2005/2980 (England), SI 2006/1672 (Wales)).

TEXT AND NOTE 3--For 'fire services' substitute 'fire and rescue services': SI 1992/129 r A5(2), (amended by SI 2005/2980 (England), SI 2006/1672 (Wales)).

NOTE 3--For 'as a member of a brigade' substitute 'by a fire and rescue authority'; and for 'fire authority' substitute 'fire and rescue authority': SI 1992/129 r A5(3)(a), (c) (amended by SI 2005/2980 (England), SI 2006/1672 (Wales)).

NOTE 4--SI 1992/129 r A4(3), (e) substituted, in relation to England, by SI 2005/2980, and in relation to Wales, by SI 2006/1672, so as to substitute the words 'by a fire and rescue authority' for the words 'as a member of the brigade'.

NOTE 5--For 'a member of a brigade' substitute 'an employee of a fire and rescue authority' and for 'who is enrolled for service in the brigade which' substitute 'whose employment': SI 1992/129 r A6 (amended by SI 2005/2980 (England), SI 2006/1672 (Wales)).

NOTE 6--1959 Act s 9 repealed: Fire and Rescue Services Act 2004 Sch 2. As to pensions see ss 34-36. SI 1997/1612 reg 4(1)-(3), Sch 2 revoked: SI 2008/238. See now the Local Government Pension Scheme (Administration) Regulations 2008, SI 2008/239, reg 4, Sch 2 (reg 4 amended by SI 2009/3150).

NOTES 7-10--SI 1992/129 rr A7-A10 amended, in relation to Wales, by SI 2006/1672.

NOTES 7, 8--SI 1992/129 rr A7, A8 amended, in relation to England, by SI 2005/2980.

TEXT AND NOTE 9--SI 1992/129 r A9 revoked by SI 2006/1810 (England), SI 2007/1074 (Wales); as to a qualifying injury, see now the Firefighters' Compensation Scheme (England) Order 2006, SI 2006/1811, Pt 1 r 7 (amended by SI 2006/3434) and the Firefighters' Compensation Scheme (Wales) Order 2007, SI 2007/1073, Pt 1 r 7.

NOTE 10--SI 1992/129 r A10 amended by SI 2006/1810 (England), SI 2007/1074 (Wales); as to disablement, see also SI 2006/1811 (TEXT AND NOTE 9) Pt 1 r 8, SI 2007/1073 (TEXT AND NOTE 9) Pt 1 r 8. See *R (on the application of Marrion) v Board of Medical Referees* [2009] EWCA Civ 450, [2009] All ER (D) 75 (Apr).

TEXT AND NOTE 11--SI 1992/129 r A11 revoked by SI 2006/1810 (England), SI 2007/1074 (Wales); as to death or infirmity resulting from a qualifying injury, see now SI 2006/1811 (TEXT AND NOTE 9) Pt 1 r 9, SI 2007/1073 (TEXT AND NOTE 9) Pt 1 r 9.

NOTE 13--SI 1992/129 r A13 substituted: SI 2005/2980 (England), SI 2006/1672 (Wales) (see PARA 46).

NOTE 14--SI 1992/129 r A14 amended by SI 2004/1912; and substituted by SI 2005/2980 (England), SI 2006/1672 (Wales).

NOTES 15, 16--SI 1992/129 rr A15, A16 amended: SI 2005/2980 (England), SI 2006/1672 (Wales).

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#### **48. Information in connection with firemen's pensions.**

A fire authority may in prescribed circumstances provide information to a prescribed person in connection with the following questions<sup>1</sup>:

- 48 (1) whether an individual who has opted or transferred out has suffered loss as a result of a contravention which is actionable<sup>2</sup>; and
- 49 (2) if so, what payment would need to be made in respect of that individual to the fire authority concerned to restore the position to what it would have been if that individual had not opted or transferred out<sup>3</sup>.

The fire authority may require that person to pay a reasonable fee in respect of any administrative expenses incurred in providing that information<sup>4</sup>.

Where an individual who has opted or transferred out becomes entitled to make contributions under the scheme<sup>5</sup> to a fire authority, or a payment is made to a fire authority in respect of such an individual for the purpose mentioned in head (2) above<sup>6</sup>, the fire authority may require a prescribed person to pay a reasonable fee in respect of any administrative expenses incurred in connection with that entitlement or payment<sup>7</sup>.

For these purposes an individual is to be taken to have opted or transferred out if for any period during which he is a member of a fire brigade maintained in pursuance of the Fire Services Act 1947, he does not make contributions under the scheme but instead makes contributions to a personal pension scheme, or a transfer value is paid in respect of the individual by a fire authority to a personal pension scheme<sup>8</sup>.

1 Fire Services Act 1947 s 27A(1)(a) (s 27A added by the Police and Firemen's Pensions Act 1997 s 3). For these purposes, 'prescribed' means prescribed by regulations made by the Secretary of State under the Fire Services Act 1947 s 27A (as added): s 27A(5) (as so added). As to the Secretary of State see PARA 10 ante. For the meaning of 'fire authority' see PARA 17 ante. There are regulations which prescribe the circumstances in which such information may be provided by a fire authority; the persons to whom such information may be provided and the persons who may be required to pay a fee in respect of expenses: see the Firemen's Pension (Provision of Information) Regulations 1997, SI 1997/1829.

2 Fire Services Act 1947 s 27A(2)(a) (as added: see note 1 supra). The reference in the text to a contravention which is actionable is to one actionable under the Financial Services Act 1986 s 62 (actions for damages in respect of contravention of rules etc made under the Act): Fire Services Act 1947 s 27A(2)(a) (as so added).

3 Ibid s 27A(2)(b) (as added: see note 1 supra).

4 Ibid s 27A(1)(b) (as added: see note 1 supra).

5 For these purposes, 'the scheme' has the same meaning as in ibid s 26 (as amended) (see PARAS 45-46 ante), s 27 (as amended) (see PARA 45 ante): s 27A(5) (as added: see note 1 supra).

6 See the text and note 3 supra.

7 Fire Services Act 1947 s 27A(3) (as added: see note 1 supra).

8 Ibid s 27A(4) (as added: see note 1 supra). For these purposes, 'personal pension scheme' has the meaning given by the Pension Schemes Act 1993 s 1 (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 710): Fire Services Act 1947 s 27A(5) (as so added).

**UPDATE****45-58 Pensions**

Firemen's Pension Scheme continued in force and renamed the Firefighters' Pension Scheme or, in Wales, the Firefighters' Pension (Wales) Scheme: see the Firefighters' Pension Scheme (England and Scotland) Order 2004, SI 2004/2306; and the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004, SI 2004/2918. In relation to England, the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In relation to Wales, the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1 (Sch 1 amended by SI 2009/1225).

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

**48 Information in connection with firemen's pensions**

TEXT AND NOTES--1947 Act s 27A now Fire and Rescue Services Act 2004 s 35.

NOTE 1--SI 1997/1829 amended: SI 2001/3649.

NOTE 2--Reference to Financial Services Act 1986 s 62 now to Financial Services and Markets Act 2000 s 150.



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#### **49. Personal awards.**

A regular firefighter is entitled to an ordinary pension under the Firemen's Pension Scheme<sup>1</sup> if at the date of his retirement he has reached 50 years of age and has 25 years of reckonable service and is not entitled to an ill-health award under the scheme<sup>2</sup>. Where a regular firefighter is not entitled to an ordinary pension on retirement he may be entitled to a short service award<sup>3</sup>. Where his retirement is compulsory on the grounds of disablement the scheme provides for an ill-health pension or an ill-health gratuity<sup>4</sup>. If a regular firefighter has retired and is permanently disabled as a result of a qualifying injury<sup>5</sup> then he is entitled to a gratuity and, in certain circumstances, to an injury pension<sup>6</sup>.

The scheme also makes provision for the payment of deferred pensions<sup>7</sup> and, when a regular firefighter ceases to be a member of a brigade otherwise than on retirement, for the repayment of aggregate pension contributions in certain circumstances<sup>8</sup>. Where a firefighter is entitled to a pension then he may commute a portion of his pension for a lump sum<sup>9</sup> and, in the case of a small pension, the fire authority may in its discretion commute the pension for a gratuity<sup>10</sup>. A person entitled to an ordinary, short service, ill-health or deferred pension may, subject to certain restrictions, allocate a portion of his pension in favour of a beneficiary, being his spouse or some other person who the fire authority is satisfied is substantially dependent on him<sup>11</sup>.

The fire authority may deduct from any payment which is chargeable to tax<sup>12</sup> the amount of tax charged<sup>13</sup>.

None of the above awards except the injury award will be made to a regular firefighter who has elected not to pay pension contributions<sup>14</sup>.

1 The Firemen's Pension Scheme 1992 is set out in the Firemen's Pension Scheme Order 1992, SI 1992/129, art 2(2), Sch 2 (as amended: see PARA 46 note 1 ante). For the meaning of 'regular firefighter' see PARA 47 note 2 ante.

2 See the Firemen's Pension Scheme 1992 r B1.

3 See *ibid* r B2.

4 See *ibid* r B3.

5 Where an award is to be made because of permanent disability, a 'qualifying injury' includes a stress-related illness which has depressive symptoms, and which is identified by a medical expert as a 'disease' or 'illness': *Bradley v London Fire and Civil Defence Authority* [1995] IRLR 46.

6 See the Firemen's Pension Scheme 1992 r B4.

7 See *ibid* r B5.

8 See *ibid* r B6.

9 See *ibid* r B7.

10 See *ibid* r B8. As to fire authorities see PARA 17 et seq ante.

11 See *ibid* rr B9, B10.

12 *Ie* under the Income and Corporation Taxes Act 1998: see the Firemen's Pension Scheme 1992 r B11.

13 See *ibid* r B11.

14 See *ibid* rr B1, B2, B3, B5.

## **UPDATE**

### **45-58 Pensions**

Firemen's Pension Scheme continued in force and renamed the Firefighters' Pension Scheme or, in Wales, the Firefighters' Pension (Wales) Scheme: see the Firefighters' Pension Scheme (England and Scotland) Order 2004, SI 2004/2306; and the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004, SI 2004/2918. In relation to England, the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In relation to Wales, the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1 (Sch 1 amended by SI 2009/1225).

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **49 Personal awards**

TEXT AND NOTES--The 1992 Scheme does not apply in relation to persons who took up employment with a fire and rescue authority on or after 6 April 2006: see SI 1992/129 r A3(5) (added by SI 2006/1810 (England), SI 2007/1074 (Wales)). In England the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In Wales the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1. A firefighter member is eligible for a pension under the new scheme if (1) he has at least three months' qualifying service; or (2) he transfers into the scheme with personal pension rights which qualify him for benefits under the scheme; or (3) he reaches normal retirement age: New Firefighters' Pension Scheme (England) Sch 1 Pt 2 r 2(1); New Firefighters' Pension Scheme (Wales) Sch 1 Pt 2 r 2(1). 'Qualifying service' has the meaning given by the New Firefighters' Pension Scheme (England) Pt 10 r 1 and the New Firefighters' Pension Scheme (Wales) Pt 10 r 1: SI 2006/3432 Sch 1 Pt 1 r 2; SI 2007/1072 Sch 1 Pt 1 r 2. 'Personal pension rights' has the meaning given by the Pensions Schemes Act 1993 s 71: SI 2006/3432 Sch 1 Pt 2 r 2(1); SI 2007/1072 Sch 1 Pt 2 r 2(1). The normal retirement age of firefighter members under the new scheme is 60: SI 2006/3432 Pt 2 r 3(1); SI 2007/1072 Pt 2 r 3(1). The new scheme also makes provision for ill-health retirement (SI 2006/3432 Pt 3 r 2, SI 2007/1072 Pt 3 r 2), for the payment and cancellation of deferred pensions (SI 2006/3432 Pt 3 rr 3, 4, SI 2007/1072 Pt 3 rr 3, 4), for payment of pensions on member-initiated and authority-initiated early retirement (SI 2006/3432 Pt 3 rr 5, 6, SI 2007/1072 Pt 3 rr 5, 6), for entitlement to two pensions where a firefighter member, on taking up a different role within the authority or becoming entitled to a different rate of pay in his existing role, suffers a reduction in the amount of his pensionable pay (SI 2006/3432 Pt 3 r 7, SI 2007/1072 Pt 3 r 7), for additional pension benefit in respect of long service and continual professional development (SI 2006/3432 Pt 3 rr 7A-7C), and for the repayment of aggregate pension contributions in certain circumstances (SI 2006/3432 Pt 3 r 8, SI 2007/1072 Pt 3 r 8). Where a firefighter is entitled to a pension then he may commute a portion of his pension for a lump sum and, in the case of a small pension, the fire authority may commute the pension for a lump sum: see SI 2006/3432 Pt 3 rr 9, 10; SI 2007/1072 rr

9, 10. A firefighter member may, subject to certain restrictions, allocate up to one-third of any pension in favour of his spouse, civil partner or nominated partner, or with the consent of the fire and rescue authority, some other person who is substantially dependent on him: see SI 2006/3432 Pt 3 r 11; SI 2007/1072 Pt 3 r 11. Provision is also made for the calculation of a pension debit member's entitlement to an award: see SI 2006/3432 Pt 3 r 12; SI 2007/1072 Pt 3 r 12.

As to the calculation of a pension debit member's entitlement to an award under SI 1992/129 rr B1, B2, B3 or B5, see r B12 (added by SI 2001/3691). A pension debit member is a person whose benefits or future benefits under SI 1992/129 have been reduced under the Welfare Reforms and Pensions Act 1999 s 31: SI 1992/129 Sch 1 Part I; SI 2001/3691.

NOTES 2-4--SI 1992/129 rr B1-B3 amended, in relation to Wales, by SI 2006/1672.

NOTE 2--SI 1992/129 r B1 amended, in relation to England, by SI 2005/2980.

TEXT AND NOTES 3, 4--SI 1992/129 rr B2, B3 substituted, in relation to England, by SI 2006/1810 (and amended by SI 2006/3433), and, in relation to Wales, by SI 2007/1074 (Wales).

NOTE 5--See also *R (on the application of the London Fire and Emergency Planning Authority) v Board of Medical Referees* [2008] EWCA Civ 1515, [2009] ICR 697, [2008] All ER (D) 58 (Dec) (naturally occurring condition may qualify where accident at work substantially contributes to disablement).

TEXT AND NOTE 6--SI 1992/129 r B4 now Firefighters' Compensation Scheme (England) Order 2006, SI 2006/1811, Sch 1 Pt 2 r 1 (amended by SI 2006/3434); Firefighters' Compensation Scheme (Wales) Order 2007, SI 2007/1073, Sch 1 Pt 2 r 1.

NOTES 7, 9--SI 1992/129 rr B5, B7 amended by SI 2004/1912, SI 2005/2980 (England), SI 2006/1672 (Wales), SI 2006/1810 (England), SI 2006/3433, SI 2007/1074 (Wales).

NOTE 7--See SI 1992/129 rr B5A-B5D (added by SI 2008/214 (England)) which relate to entitlement to two pensions (SI 1992/129 r B5A); additional pension benefit in respect of long service increment (r B5B); additional pension benefit with respect to continual professional development (r B5B); and supplementary provisions on additional pension benefit (r B5D).

TEXT AND NOTE 8--SI 1992/129 r B6 amended, in relation to England, by SI 2005/2980, SI 2006/1810, and, in relation to Wales, by SI 2006/1672, SI 2007/1074.

TEXT AND NOTE 10--SI 1992/129 r B8 amended by SI 2001/3691 and, in relation to England, by SI 2005/2980, SI 2006/1810, and, in relation to Wales, by SI 2006/1672, SI 2007/1074.

TEXT AND NOTE 11--Such a beneficiary may now be a civil partner; for 'fire and rescue authority' read 'fire authority': SI 1992/129 r B9 (amended by SI 2004/1912, SI 2005/2980 (England), SI 2005/3228 (England), SI 2006/1672 (Wales), SI 2006/1810 (England), SI 2007/1074 (Wales)). SI 1992/129 r B10 amended: SI 2006/1810 (England), SI 2007/1074 (Wales).

TEXT AND NOTES 12, 13--For 'fire authority' read 'fire and rescue authority': SI 1992/129 r B11 (amended by SI 2005/2980 (England), SI 2006/1672 (Wales)). A fire and rescue authority must deduct from any payment which is chargeable to tax, or subject to a lifetime allowance charge within the meaning of the Finance Act 2004, the amount of tax charged or the amount of charge to be recovered: SI 1992/129 r B11 (substituted by SI 2006/1810 (England), SI 2007/1074 (Wales)).

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## **50. Awards on death.**

Where a person dies leaving a surviving spouse and at the time of death is entitled, as a regular firefighter, under the Firemen's Pension Scheme<sup>1</sup> to a pension<sup>2</sup>, or is in receipt of such a pension, the spouse is entitled to an ordinary pension<sup>3</sup> providing the deceased was entitled to reckon at least three years' pensionable service<sup>4</sup>. A payment to a surviving spouse of an accrued pension may be made where the deceased was entitled to a deferred pension<sup>5</sup>. The scheme also makes provision for limiting awards to widows with reference to the date of marriage<sup>6</sup> or where the spouses were living apart at the time of death<sup>7</sup>, and makes provision as to the effects of remarriage on the surviving spouse<sup>8</sup>.

Similarly, the scheme provides for the payment of certain awards<sup>9</sup> to surviving children<sup>10</sup>.

There are also additional provisions relating to the following awards which may be payable on death<sup>11</sup>: lump sum death grant<sup>12</sup>; adult dependent relative's special pension<sup>13</sup>; dependent relative's gratuity<sup>14</sup>; and gratuity in lieu of surviving spouse's pension<sup>15</sup> or in lieu of child's allowance<sup>16</sup>.

1 The Firemen's Pension Scheme 1992 is set out in the Firemen's Pension Scheme Order 1992, SI 1992/129, art 2(2), Sch 2 (as amended: see PARA 46 note 1 ante). For the meaning of regular firefighter see PARA 47 note 2 ante.

2 I.e. an ordinary, short service, or ill-health pension or, in certain circumstances, an injury pension or ill-health gratuity (see PARA 49 ante): see the Firemen's Pension Scheme 1992 r C1.

3 As to ordinary pensions see PARA 49 ante.

4 See the Firemen's Pension Scheme 1992 r C1. In certain circumstances the spouse may receive a special or augmented award or both: see the Firemen's Pension Scheme 1992 rr C2, C3.

5 See *ibid* r C4.

6 See *ibid* r C5.

7 See *ibid* r C8.

8 See *ibid* r C9. There are also provisions for the payment to a surviving spouse of a temporary pension and a requisite benefit pension and, where no other award is payable, of a spouse's award: see rr C6, C7.

9 As to the awards payable see rr D1-D4.

10 See *ibid* rr D1-D5.

11 See *ibid* rr E1-E9.

12 See *ibid* r E1.

13 See *ibid* r E2.

14 See *ibid* r E3. The scheme also provides for the payment of the balance of aggregate pension contributions to the deceased's estate: see r E4.

15 See *ibid* r E5.

16 See *ibid* r E6. The scheme limits the fire authority's discretion to commute a pension or allowance for a gratuity on death: see r E7. It also provides for the increase of pensions and allowances for survivors during the first 13 weeks (see r E8) and in respect of flat-rate awards (see r E9).

**UPDATE****45-58 Pensions**

Firemen's Pension Scheme continued in force and renamed the Firefighters' Pension Scheme or, in Wales, the Firefighters' Pension (Wales) Scheme: see the Firefighters' Pension Scheme (England and Scotland) Order 2004, SI 2004/2306; and the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004, SI 2004/2918. In relation to England, the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In relation to Wales, the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1 (Sch 1 amended by SI 2009/1225).

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

**50 Awards on death**

TEXT AND NOTES--The 1992 scheme does not apply in relation to persons who took up employment with a fire and rescue authority on or after 6 April 2006: see SI 1992/129 r A3(5) (added by SI 2006/1810 (England), SI 2007/1074 (Wales)). In England the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In Wales the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1. The New Firefighters' Pension Scheme (England) Pt 4 ch 1 and the New Firefighters' Pension Scheme (Wales) Pt 4 ch 1 deal with pensions for surviving spouses, civil partners and nominated partners, and the New Firefighters' Pension Scheme (England) Pt 4 ch 2 and the New Firefighters' Pension Scheme (Wales) Pt 4 ch 2 deal with pensions for children. Where a firefighter member dies in service, provision is also made for a lump sum death grant which is three times pensionable pay at the date of death (New Firefighters' Pension Scheme (England) Pt 5 r 1, New Firefighters' Pension Scheme (Wales) Pt 5 r 1). The New Firefighters' Pension Scheme (England) Part 5 r 2 and the New Firefighters' Pension Scheme (England) Part 5 r 2 make provision for post-retirement death grants.

The provisions of SI 1992/129 (as amended by SI 2005/3228 (England), SI 2006/1672 (Wales), SI 2006/1810 (England), SI 2007/1074 (Wales)) also apply in relation to civil partners.

TEXT AND NOTES 1-8--As to the calculation of a pension debit member's entitlement to an award, see SI 1992/129 r C10 (added by SI 2001/3619). For the meaning of 'pension debit member' see PARA 49.

NOTES 2, 8--SI 1992/129 r C1 amended by SI 2004/1912; and, in relation to England, by SI 2005/2980, SI 2006/1810, and, in relation to Wales, by SI 2006/1672, SI 2007/1074.

NOTE 4--SI 1992/129 rr C2, C3 revoked, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074. In relation to England, as to a spouse or a civil partner's special or augmented award, see now the Firefighters' Compensation Scheme (England) Order 2006, SI 2006/1811, Pt 3 rr 1, 2 (Pt 3 r 1 amended by SI 2006/3434). In relation to Wales, as to a spouse or a civil partner's special or augmented award, see

now the Firefighters' Compensation Scheme (Wales) Order 2007, SI 2007/1073, Pt 3 rr 1, 2.

NOTE 5--SI 1992/129 r C4 amended: SI 2005/2980 (England), SI 2006/1672 (Wales).

NOTE 6--SI 1992/129 r C5 in relation to England, substituted by SI 2005/2980 and amended by SI 2006/1810, and in relation to Wales, substituted by SI 2006/1672 and amended by SI 2007/1074.

NOTES 7, 8--SI 1992/129 rr C8, C9 amended: SI 2005/2980 (England), SI 2006/1672 (Wales), SI 2006/1810 (England), SI 2007/1074 (Wales).

NOTE 8--SI 1992/129 r C6 substituted, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074. SI 1992/129 r C7 substituted, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074.

NOTES 9, 10--SI 1992/129 r D1 amended, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074. SI 1992/129 rr D2, D3 revoked, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074. As to a child's special allowance or special gratuity, in relation to England, see now SI 2006/1811 (NOTE 4) Pt 4 rr 1, 2, and in relation to Wales, see now SI 2007/1073 (NOTE 4) Pt 4 rr 1, 2.

NOTE 10--SI 1992/129 r D5 amended: SI 2005/2980 (England), SI 2006/1672 (Wales), SI 2007/1074. See also SI 1992/129 r D6 (added by SI 2001/3619).

NOTE 12--SI 1992/129 r E1 amended, in relation to England, by SI 2006/1810, and in relation to Wales, by SI 2007/1074.

TEXT AND NOTE 13--SI 1992/129 r E2 revoked, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074. As to an adult dependent relative's special pension, in relation to England, see now SI 2006/1811 (see NOTE 4) Pt 5 r 1, and, in relation to Wales, see now SI 2007/1073 (see NOTE 4) Pt 5 r 1.

NOTE 14--SI 1992/129 r E3 amended: SI 2005/2980 (England), SI 2006/1672 (Wales). SI 1992/129 r E4 amended by SI 2001/3619, and, in relation to England, amended by SI 2005/2980 and SI 2006/1810, and, in relation to Wales, amended by SI 2006/1672 and SI 2007/1074.

TEXT AND NOTE 15--SI 1992/129 r E5, in relation to England, substituted by SI 2006/1810, and amended by SI 2006/3433, and, in relation to Wales, substituted by SI 2007/1074.

TEXT AND NOTE 16--SI 1992/129 r E6, in relation to England, substituted by SI 2006/1810, and amended by SI 2006/3433, and, in relation to Wales, substituted by SI 2007/1074.

NOTE 16--SI 1992/129 r E7 amended, in relation to England, by SI 2005/2980, SI 2006/1810, and, in relation to Wales, by SI 2006/1672, SI 2007/1074. SI 1992/129 r E8 amended, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074. As to an increase of pensions and allowances during the first 13 weeks, in relation to England, see SI 2006/1811 (NOTE 4) Pt 5 r 5 (amended by SI 2006/3434), and, in relation to Wales, see SI 2007/1073 (NOTE 4) Pt 5 r 5. SI 1992/129 r E9 amended by SI 2001/3619, SI 2005/2980(England), SI 2006/1672 (Wales).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(3) PENSIONS/51. Pensionable service, pay and contributions; transfer values.

### **51. Pensionable service, pay and contributions; transfer values.**

The Firemen's Pension Scheme<sup>1</sup> provides that a regular firefighter<sup>2</sup> is entitled to reckon as pensionable service any period of service as a regular firefighter after 31 March 1972, except a period during which pension contributions were not payable<sup>3</sup>, and if he was serving in the same brigade both on and immediately before 1 April 1972, any period he was entitled to reckon immediately before that date<sup>4</sup>.

Subject to the permitted maximum<sup>5</sup>, the pensionable pay of a regular firefighter is his pay as determined in relation to his rank, or, in the case of a chief officer or assistant chief officer, for the post<sup>6</sup>. Subject to the rules of the scheme<sup>7</sup>, the average pensionable pay of a regular firefighter is the aggregate of his pensionable pay during the year ending with the relevant date<sup>8</sup>. If the amount determined<sup>9</sup> is less than it would have been if the relevant date had been the corresponding date in whichever of the two preceding years yields the highest amount, that corresponding date is taken to be the relevant date<sup>10</sup>. A regular firefighter's average pensionable pay for a week is his average pensionable pay divided by 52 and one sixth<sup>11</sup>. The contributions payable<sup>12</sup> on each instalment of pay are due at the same time as that instalment and, without prejudice to any other method of payment, may be deducted by the fire authority<sup>13</sup> from the instalment<sup>14</sup>.

The scheme contains provisions enabling a regular firefighter to elect not to pay pension contributions<sup>15</sup>, to continue paying additional and further contributions<sup>16</sup> and to purchase increased benefits<sup>17</sup>.

The scheme also provides that a fire authority may, subject to the rules of the scheme<sup>18</sup>, accept a transfer value offered to it in respect of a person who has become a regular firefighter in a brigade maintained by it, by the scheme managers of a superannuation scheme to which the firefighter was subject in previous service or employment<sup>19</sup>, and there are provisions relating to the receipt and payment of such transfers values<sup>20</sup> and the transfer of payments between fire authorities<sup>21</sup>. There are also provisions in respect of a regular firefighter who has opted out, or transferred out, of the scheme, or both, and contributed instead to a personal pension scheme and suffered loss as a result<sup>22</sup>.

1 The Firemen's Pension Scheme 1992 is set out in the Firemen's Pension Scheme Order 1992, SI 1992/129, art 2(2), Sch 2 (as amended: see PARA 46 note 1 ante).

2 For the meaning of 'regular firefighter' see PARA 47 note 2 ante.

3 I.e. payable under the Fireman's Pension Scheme 1992 r G2: see the text and note 13 infra.

4 Ibid r F2(1). This provision is subject to r F2(2), F2(3): r F2(1). The scheme provides for the calculation of the period of reckonable service and the supply of certificates in respect of such service: see rr F1-F6.

5 I.e. subject to the permitted maximum set out in ibid r G1(2): see note 6 infra.

6 Ibid r G1(1). For these purposes, in the case of a person by whom pension contributions became payable after 31 May 1989 either for the first time, or following any period in respect of which they were not payable, except where the Retirement Benefit Schemes (Tax Relief on Contributions) (Disapplication of Earnings Cap) Regulations 1990, SI 1990/586, reg 4 applies (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 755), his pay must be taken not to include any excess, in any tax year, over the figure which is the permitted maximum for that year for the purposes of the Income and Corporation Taxes Act 1988 s 594(2) (as amended), (3) (as added) (i.e. the figure specified for the year by an order made by the Treasury under s 590C(6) (as added) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 756): see the Firemen's Pension Scheme 1992 r G1(2).

7 le subject to *ibid* r G1(5) (see note 8 *infra*), (7) (see the text and note 10 *infra*).

8 See *ibid* r G1(3). The relevant date is, for the purposes of injury awards (see r B4; and PARA 49 *ante*), spouse's special awards (see r C2; and PARA 50 *ante*), spouse's awards where no other awards are payable (see r C7; and PARA 50 *ante*), child's special allowances (see r D2; and PARA 50 *ante*), child's special gratuities (see r D3; and PARA 50 *ante*) and adult dependent relative's special pensions (see r E2; and PARA 50 *ante*), the date of the person's last day of service as a regular firefighter, and for all other purposes, the date of his last day of service in a period during which pension contributions were payable under r G2 (see the text and note 13 *infra*): r G1(4). Subject to r G1(6) and r G1(7) (see note 10 *infra*), if a regular firefighter was in receipt of pensionable pay for part only of the year ending with the relevant date, his average pensionable pay is the aggregate of his pensionable pay for that part multiplied by the reciprocal of the fraction of the year which that part represents: r G1(5). For the purposes of r G1(3) and r G1(5) any reduction of pensionable pay during sick leave or stoppage by way of punishment is disregarded: r G1(6).

9 le determined in accordance with *ibid* r G1(3)-G1(6): see note 8 *supra*.

10 See *ibid* r G1(7).

11 *Ibid* r G1(8).

12 le under *ibid* r G1(1): see the text and note 6 *supra*.

13 As to fire authorities see PARA 17 *et seq ante*.

14 Firemen's Pension Scheme 1992 r G2(2). A regular firefighter must, except while an election under r G3 (see the text and note 14 *infra*) has effect, pay pension contributions to the fire authority at the rate of one pence a week less than 11% of his pensionable pay: r G2(1).

15 See *ibid* r G3. A regular firefighter must cancel an election not to pay pension contributions no later than his 45th birthday unless he has suffered a loss which is actionable under the Financial Services Act 1986 s 62 (see PARA 48 note 2 *ante*) (Firemen's Pension Scheme 1992 rr F6A, G3(5A) (added by SI 1997/2581) but will not be able to make a further election during the same period of service as a regular firefighter (see the Firemen's Pension Scheme 1992 r G3(8)).

16 See *ibid* r G4.

17 See *ibid* rr G5, G6. There are provisions as to the payment of periodical contributions for increased benefits and the effect of payment for such increased benefits see rr G7, G8.

18 le subject to the Firemen's Pension Scheme 1992 r F7(2), F7(4): see r F7(1).

19 See *ibid* r F7(1).

20 See *ibid* rr F7, F9.

21 See *ibid* r F8.

22 See *ibid* rr F6A, F6B (both added by SI 1997/2851).

## UPDATE

### 45-58 Pensions

Firemen's Pension Scheme continued in force and renamed the Firefighters' Pension Scheme or, in Wales, the Firefighters' Pension (Wales) Scheme: see the Firefighters' Pension Scheme (England and Scotland) Order 2004, SI 2004/2306; and the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004, SI 2004/2918. In relation to England, the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In relation to Wales, the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1 (Sch 1 amended by SI 2009/1225).



Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **51 Pensionable service, pay and contributions; transfer values**

TEXT AND NOTES--The 1992 scheme does not apply in relation to persons who took up employment with a fire and rescue authority on or after 6 April 2006: see SI 1992/129 r A3(5) (added by SI 2006/1810 (England), SI 2007/1074 (Wales)). In England the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In Wales the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1. As to the reckoning of qualifying service and pensionable service see the New Firefighters' Pension Scheme (England) Pt 10 and the New Firefighters' Pension Scheme (Wales) Pt 10. Subject to the permitted maximum, the pensionable pay of a firefighter member under the new scheme is the aggregate of (1) his pay in relation to the performance of the duties of his role, other than any allowance or emoluments that are paid to him on a temporary basis; and (2) his permanent emoluments (including, in the case of a retained firefighter, any retaining allowance): New Firefighters' Pension Scheme (England) Pt 11 r 1(1); New Firefighters' Pension Scheme (Wales) Pt 11 r 1(1). Where a firefighter member surrenders the right to receive part of his pensionable pay in exchange for the provision by his employing authority of any non-cash benefit, the amount forgone continues to be treated as part of his pensionable pay for all purposes of the new scheme (including determining pension contributions and calculating awards): New Firefighters' Pension Scheme (England) Pt 11 r 1(2); New Firefighters' Pension Scheme (Wales) Pt 11 r 1(2). A firefighter member's pensionable pay in any tax year is to be taken not to include any amount in excess of the permitted maximum for that year: New Firefighters' Pension Scheme (England) Pt 11 r 1(3); New Firefighters' Pension Scheme (Wales) Pt 11 r 1(3). For these purposes, the permitted maximum for a tax year is £108,600; but in relation to a tax year other than the tax year ending in 2007, this is subject to the New Firefighters' Pension Scheme (England) Pt 11 r 1(5) and the New Firefighters' Pension Scheme (Wales) Pt 11 r 1(5): New Firefighters' Pension Scheme (England) Pt 11 r 1(4); New Firefighters' Pension Scheme (Wales) Pt 11 r 1(4). Where the retail price index for the month of December in the tax year preceding the tax year in question is higher than it was for the previous December, the permitted maximum for the tax year in question is the amount arrived at (a) by increasing the permitted maximum for the previous tax year by the same percentage as the percentage increase in the retail prices index; and (b) if the result is not a multiple of £600, by rounding it up to the nearest amount which is a multiple of £600: New Firefighters' Pension Scheme (England) Pt 11 r 1(5); New Firefighters' Pension Scheme (Wales) Pt 11 r 1(5). Subject to the provisions of the New Firefighters' Pension Scheme (England) Pt 11 r 2 and the New Firefighters' Pension Scheme (Wales) Pt 11 r 2, for the purpose of calculating pensions under the new scheme, the final pensionable pay of a firefighter member is the aggregate of pensionable pay received in respect of the 365 pensionable pay days ending with the relevant date: New Firefighters' Pension Scheme (England) Pt 11 r 2(1); New Firefighters' Pension Scheme (Wales) Pt 11 r 2(1). For these purposes, 'the relevant date' (i) in relation to a firefighter member who is entitled to two pensions under the New Firefighters' Pension Scheme (England) Pt 3 r 7 and the New Firefighters' Pension Scheme (Wales) Pt 3 r 7 means, as regards the first pension, the date on which he was last paid at the higher rate (before changing roles and accepting a reduction in pensionable pay), and, as regards the second pension, the last day of his membership of the scheme or, if he dies in service, the date of his death; and (ii) in any other case, means the date of the

firefighter member's last day of pensionable service or, if he dies in service, the date of his death: New Firefighters' Pension Scheme (England) Pt 11 r 2(2); New Firefighters' Pension Scheme (Wales) Pt 11 r 2(2). A firefighter member must pay pension contributions to the authority at the rate of 8.5 per cent of his pensionable pay for the time being: New Firefighters' Pension Scheme (England) Pt 11 r 3(1); New Firefighters' Pension Scheme (Wales) Pt 11 r 3(1). Provision is also made for optional contributions during maternity and adoption leave: see New Firefighters' Pension Scheme (England) Pt 11 r 4; New Firefighters' Pension Scheme (Wales) Pt 11 r 4. The New Firefighters' Pension Scheme (England) Pt 12 and the New Firefighters' Pension Scheme (Wales) Part 12 deal with transfers into and out of the new scheme.

TEXT AND NOTES 2-4--Now, subject to SI 1992/129 r F2(2), (3) (r F2(2) substituted, in relation to England, by SI 2005/2980, and in relation to Wales, by SI 2006/1672 (Wales), r F2(3), (4) substituted, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074) a regular firefighter is entitled to reckon as pensionable service (1) any period of service after 30 September 2004, as a regular firefighter in the employment of a fire and rescue authority, except a period during which pension contributions were not payable under r G2; and (2) if he served as a regular firefighter in a brigade after 31 March 1972 and before 1 October 2004, any period of service in that brigade, except a period during which pension contributions were not payable under r G2; and (3) if he was serving in a brigade both on and immediately before 1 April 1972, any period he was entitled to reckon immediately before that date: SI 1992/129 r F2(1) (substituted by SI 2005/2980 (England), SI 2006/1672 (Wales)).

NOTE 4--SI 1992/129 r F1 amended by SI 2004/1912; and, in relation to England, by SI 2005/2980, SI 2006/1810, and, in relation to Wales, by SI 2006/1672, SI 2007/1074. SI 1992/129 r F2A added by SI 2004/1912; and, in relation to England, amended by SI 2005/2980, and, in relation to Wales, by SI 2006/1672. SI 1992/129 rr F3, F5 amended: SI 2005/2980 (England), SI 2006/1672 (Wales), SI 2006/1810 (England), SI 2007/1074 (Wales). SI 1992/129 r F4: amended: SI 2005/2980 (England), SI 2006/1672 (Wales).

TEXT AND NOTES 5, 6--Subject to the permitted maximum set out in SI 1992/129 r G1(2), the pensionable pay of a regular firefighter is the amount determined in relation to the performance of the duties of his role, whether as a whole-time or part-time employee: r G1(1) (substituted by SI 2005/2980 (England), SI 2006/1672 (Wales)).

NOTE 6--SI 1992/129 r G1(1) substituted: SI 2008/214 (England). SI 1992/129 r G1(2A) added: SI 2004/1912.

NOTE 8--SI 1992/129 r G1(3) amended: SI 2004/1912, SI 2008/214 (England). SI 1992/129 r G1(6) substituted: SI 2004/1912. SI 1992/129 r G1(4) amended, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074.

NOTE 10--SI 1992/129 r G1(7A)-(7D) added: SI 2008/214 (England).

TEXT AND NOTES 13, 14--SI 1992/129 r G2 amended, in relation to England, by SI 2005/2980, and, in relation to Wales, by SI 2006/1672, so that references to 'fire authority' are to 'fire and rescue authority'. SI 1992/129 r G2(3)-(5) added, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074.

NOTE 14--SI 1992/129 r G2A added by SI 2004/1912; and amended by SI 2005/2980 (England). SI 1992/129 r G2(1) substituted, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074.

NOTE 15--SI 1992/129 r G3 amended, in relation to England, by SI 2005/2980, SI 2006/1810, SI 2008/214, and, in relation to Wales, by SI 2006/1672, SI 2007/1074.

NOTE 17--SI 1992/129 r G5 amended: SI 2005/2980 (England), SI 2006/1672 (Wales). SI 1992/129 r G6 amended by SI 2001/3619, and, in relation to England, by SI 2005/2980, SI 2006/1810, and, in relation to Wales, by SI 2006/1672, SI 2007/1074. SI 1992/129 r G7 amended by SI 2004/1912; and, in relation to England, by SI 2005/2980, SI 2006/1810, and, in relation to Wales, by SI 2006/1672, SI 2007/1074. SI 1992/129 r G8 amended: SI 2005/2980 (England), SI 2006/1672 (Wales).

TEXT AND NOTES 18, 19--For 'fire authority' substitute 'fire and rescue authority' and for 'has become a regular firefighter in the brigade maintained by it' substitute 'has taken up employment with it as a regular firefighter': SI 1992/129 r F7(1) (amended by SI 2005/2980 (England), SI 2006/1672 (Wales)). SI 1992/129 r F7(2) amended, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074.

NOTE 20--SI 1992/129 rr F7, F9 amended by SI 2001/3619, SI 2005/2980 (England), SI 2006/1672 (Wales).

TEXT AND NOTE 21--SI 1992/129 r F8 substituted, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074. SI 1992/129 r F8(1A) added by SI 2005/2980 (England), SI 2006/1672 (Wales).

NOTE 22--SI 1992/129 r F6A amended: SI 2005/2980 (England), SI 2006/1672 (Wales), SI 2006/3433 (England), SI 2007/1074 (Wales). SI 1992/129 r F6B amended: SI 2005/2980 (England), SI 2006/1672 (Wales).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(3) PENSIONS/52. Determination of questions and appeals.

## **52. Determination of questions and appeals.**

Under the Firemen's Pension Scheme<sup>1</sup> the question whether a person is entitled to any and if so what awards is determined in the first instance by the fire authority<sup>2</sup>. Subject to the rules of the scheme<sup>3</sup>, before deciding, for the purpose of determining that question or any other question arising under the scheme, whether a person has been disabled, whether any disablement is likely to be permanent, whether any disablement has been occasioned by a qualifying injury, the degree to which a person is disabled, whether a person has become capable of performing the duties of a regular firefighter, or any other issue wholly or partly of a medical nature, the fire authority must obtain and consider the written opinion of at least one qualified medical practitioner selected by it<sup>4</sup>.

If by reason of the person's refusal or wilful or negligent failure to submit to medical examination by the practitioner or practitioners selected by it the authority is unable to obtain such an the opinion it may on such other medical evidence as it thinks fit, or without medical evidence, give such decision on the issue as it may in its discretion choose to give<sup>5</sup>.

Where a medical opinion has been obtained, and, within 14 days of his being notified of the fire authority's decision on the issue, the person concerned applies to it for a copy of the opinion, the authority must supply him with a copy, together with a statement informing him that, if he wishes to appeal against the opinion, he must give the authority written notice of his grounds of appeal, together with his name and address, within 14 days of the date on which he is so supplied<sup>6</sup>. If the person concerned is dissatisfied with the opinion which has been supplied to him he may appeal against it by giving notice to the fire authority<sup>7</sup>.

Where a person claims that he is entitled to an award or to any payment in respect of an award and the fire authority does not admit the claim at all, or does not admit the claim to its full extent, the authority will reconsider the case if he applies to it to do so<sup>8</sup>. If he is dissatisfied with any determination given by the fire authority on reconsidering the case, he may appeal to the Crown Court, which may make such order or declaration in the matter as appears to it to be just<sup>9</sup>.

1 The Firemen's Pension Scheme 1992 is set out in the Firemen's Pension Scheme Order 1992, SI 1992/129, art 2(2), Sch 2 (as amended: see PARA 46 note 1 ante).

2 Firemen's Pension Scheme 1992 r H1(1). As to fire authorities see PARA 17 et seq ante.

3 Ie subject to *ibid* r H1(3): see the text and note 5 infra.

4 *Ibid* r H1(2). For the meaning of 'regular firefighter' see PARA 47 note 2 ante.

5 *Ibid* r H1(3).

6 *Ibid* r H2(1) (amended by SI 1997/2309).

7 Firemen's Pension Scheme 1992 r H2(2) (amended by SI 1997/2309). The reference in the text to giving notice to the fire authority is giving such notice in accordance with r H2, Sch 9 Pt I para 1: Firemen's Pension Scheme 1992 r H2(4). A fire authority is bound by any decision on a medical issue duly given on an appeal under this rule: r H2(3). Further provisions as to appeals under this rule are contained in Sch 9: r H2(4).

8 *Ibid* r H3(1).

9 *Ibid* r H3(2). Nothing in the Firemen's Pension Scheme 1992 r H3(2) is taken to authorise the Crown Court to make an order or declaration controlling the exercise of any discretion vested in the fire authority by any

provision of this scheme except r K5 (withdrawal of pension on conviction: see PARA 55 post); to reopen any medical issue decided on an appeal under r H2 (see the text and notes 6-7 supra); or to question any certificate as to pensionable service which has become conclusive under r F1(5) (see PARA 51 ante): r H3(3). As to appeals to the Crown Court see MAGISTRATES. The scheme also makes provision for an appeal by a person to whom this scheme applies by virtue of temporary employment in connection with the training and organisation of fire-fighting forces outside the United Kingdom (see r A4(2)(d); and PARA 47 ante) to be heard by an appeal tribunal: see r H3(4). Further provisions as to appeal tribunals are contained in Sch 9 Pt II: r H3(5).

## **UPDATE**

### **45-58 Pensions**

Firemen's Pension Scheme continued in force and renamed the Firefighters' Pension Scheme or, in Wales, the Firefighters' Pension (Wales) Scheme: see the Firefighters' Pension Scheme (England and Scotland) Order 2004, SI 2004/2306; and the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004, SI 2004/2918. In relation to England, the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In relation to Wales, the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1 (Sch 1 amended by SI 2009/1225).

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **52 Determination of questions and appeals**

TEXT AND NOTES--The 1992 scheme does not apply in relation to persons who took up employment with a fire and rescue authority on or after 6 April 2006: see SI 1992/129 r A3(5) (added by SI 2006/1810 (England), SI 2007/1074 (Wales)). In England the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In Wales the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1. Provision is made for the question whether a person is entitled to any and, if so, what awards, to be determined in the first instance by the fire and rescue authority: see New Firefighters' Pension Scheme (England) Pt 8 r 2(1); New Firefighters' Pension Scheme (Wales) Pt 8 r 2(1). Subject to the New Firefighters' Pension Scheme (England) Pt 8 r 2(6) and the New Firefighters' Pension Scheme (Wales) Pt 8 r 2(6), before deciding, for the purpose of determining that question or any other question arising under the new scheme (1) whether the person is disabled; (2) whether any disablement is likely to be permanent; (3) whether the person has become capable of performing any duties of the role from which he retired on grounds of ill-health; (4) whether the person is or has become capable of undertaking regular employment; or (5) any other issue wholly or partly of a medical nature, the authority must obtain the written opinion of an independent qualified medical practitioner (an 'IQMP') selected by it: New Firefighters' Pension Scheme (England) Pt 8 r 2(2); New Firefighters' Pension Scheme (Wales) Pt 8 r 2(2). The IQMP must certify in his written opinion (a) that he has not previously advised, or given his opinion on, or otherwise been involved in, the particular case for which the opinion has been requested; and (b) that he is not acting, and has not at any time acted, as the representative of the employee, the authority, or any other party in relation to the same case: New Firefighters' Pension Scheme (England) Pt 8 r 2(3); New Firefighters' Pension Scheme (Wales) Pt 8 r 2(3). An IQMP's opinion is binding on the authority unless it is superseded by his response under the

New Firefighters' Pension Scheme (England) Pt 8 r 3 and the New Firefighters' Pension Scheme (Wales) Pt 8 r 3 or the outcome of an appeal under the New Firefighters' Pension Scheme (England) Pt 8 r 2(4) and the New Firefighters' Pension Scheme (Wales) Pt 8 r 4: New Firefighters' Pension Scheme (England) Pt 8 r 2(4); New Firefighters' Pension Scheme (Wales) Pt 8 r 2(4). Where, in consequence of an opinion given under the New Firefighters' Pension Scheme (England) Pt 8 r 2(2) and the New Firefighters' Pension Scheme (Wales) Pt 8 r 2(2), an employee has retired on grounds of ill-health, the IQMP who gave the opinion may, if so requested by the authority for the purposes of a review under the New Firefighters' Pension Scheme (England) Pt 9 r 1(1) and the New Firefighters' Pension Scheme (Wales) Pt 9 r 1(1), give a further opinion: New Firefighters' Pension Scheme (England) Pt 8 r 2(5); New Firefighters' Pension Scheme (Wales) Pt 8 r 2(5). If the person concerned wilfully or negligently fails to submit himself to medical examination by the IQMP selected by the authority, and the IQMP is unable to give an opinion on the basis of the medical evidence available to him, the authority may make a decision on the issue on such other medical evidence as it thinks fit, or without medical evidence: New Firefighters' Pension Scheme (England) Pt 8 r 2(6); New Firefighters' Pension Scheme (Wales) Pt 8 r 2(6). Within 14 days of making a decision or determination under this provision, the authority must give written notice of it to the person concerned, and, in the case of a decision on an issue wholly or partly of a medical nature, unless the New Firefighters' Pension Scheme (England) Pt 8 r 2(6) and the New Firefighters' Pension Scheme (Wales) Pt 8 r 2(6) applies, supply him with a copy of the opinion: New Firefighters' Pension Scheme (England) Pt 8 r 2(7); New Firefighters' Pension Scheme (Wales) Pt 8 r 2(7).

Where (i) new evidence on an issue wholly or partly of a medical nature is presented to the authority by a person in respect of whom a decision has been made under the New Firefighters' Pension Scheme (England) Pt 8 r 2 and the New Firefighters' Pension Scheme (Wales) Pt 8 r 2; (ii) the authority receives that evidence, where a copy of an opinion was supplied to the person concerned, within 28 days of the receipt by that person of that copy, and, in any other case, within 28 days of the receipt by that person of notice of the authority's decision; and (iii) the authority and the person concerned agree that the IQMP ought to be given the opportunity of reviewing his opinion in the light of the new evidence, the authority must send a copy of the new evidence to the IQMP and invite him to reconsider his opinion: New Firefighters' Pension Scheme (England) Pt 8 r 3(1); New Firefighters' Pension Scheme (Wales) Pt 8 r 3(1). An IQMP's response to such an invitation must be in writing and is binding on the authority unless it is superseded by the outcome of an appeal under the New Firefighters' Pension Scheme (England) Pt 8 r 4 and the New Firefighters' Pension Scheme (Wales) Pt 8 r 4: New Firefighters' Pension Scheme (England) Pt 8 r 3(2), (3); New Firefighters' Pension Scheme (Wales) Pt 8 r 3(2), (3). As soon as reasonably practicable after receiving a response, the authority must reconsider its decision, and, within 14 days of that reconsideration, the authority must (A) give written notice to the person concerned that it has confirmed its decision or revised its decision (as the case may be); (B) if it has revised its decision, supply him with written notice of the revised decision; and (C) supply him with a copy of the response under the New Firefighters' Pension Scheme (England) Pt 8 r 3(2) and the New Firefighters' Pension Scheme (Wales) Pt 8 r 3(2): New Firefighters' Pension Scheme (England) Pt 8 r 3(5); New Firefighters' Pension Scheme (Wales) Pt 8 r 3(5). A person who wishes to appeal against an authority's decision on an issue of a medical nature may do so to a board of medical referees in accordance with the provisions of the New Firefighters' Pension Scheme (England) Annex 2 and the New Firefighters' Pension Scheme (Wales) Annex 2: New Firefighters' Pension Scheme (England) Pt 8 r 4(1); New Firefighters' Pension Scheme (Wales) Pt 8 r 4(1). Where a decision is made with regard to an opinion obtained under the New Firefighters' Pension Scheme (England) Pt 8 r 2(2) and the New Firefighters' Pension Scheme (Wales) Pt 8 r 2(2), or medical evidence relied on as

mentioned in the New Firefighters' Pension Scheme (England) Pt 8 r 2(6) and the New Firefighters' Pension Scheme (Wales) Pt 8 r 2(6), or is reconsidered under the New Firefighters' Pension Scheme (England) Pt 8 r 3(4) and the New Firefighters' Pension Scheme (Wales) Pt 8 r 3(4), the authority must, within 14 days of making, confirming or revising the decision (as the case may be), send to the person concerned the documents mentioned below: New Firefighters' Pension Scheme (England) Pt 8 r 4(2); New Firefighters' Pension Scheme (Wales) Pt 8 r 4(2). The documents are a copy of the opinion, response or evidence (as the case may be), an explanation of the procedure for appeals under this provision, and a statement that, if the person wishes to appeal against the authority's decision on an issue of a medical nature, he must give written notice to the authority, stating his name and address and the grounds of his appeal, not later than 28 days after he receives the last of the documents required to be supplied to him or within such longer period as the authority may allow: New Firefighters' Pension Scheme (England) Pt 8 r 4(4); New Firefighters' Pension Scheme (Wales) Pt 8 r 4(4). Nothing in the New Firefighters' Pension Scheme (England) Pt 8 r 4(2) and the New Firefighters' Pension Scheme (Wales) Pt 8 r 4(2) require the supply of documents that have already been supplied under the New Firefighters' Pension Scheme (England) Pt 8 r 2(7) or 3(5) and the New Firefighters' Pension Scheme (Wales) Pt 8 r 2(7) or 3(5): New Firefighters' Pension Scheme (England) Pt 8 r 4(3); New Firefighters' Pension Scheme (Wales) Pt 8 r 4(3).

Where a person disagrees with an authority's determination under the New Firefighters' Pension Scheme (England) Pt 8 r 2 and the New Firefighters' Pension Scheme (Wales) Pt 8 r 2, and his disagreement does not involve an issue of a medical nature, he may, by written notice given to the authority within 28 days of receipt of the determination, require the authority to deal with the disagreement by means of the arrangements implemented by it pursuant to the requirements of the Pensions Act 1995 s 50 (resolution of disputes) and the Occupational Pension Schemes (Internal Dispute Resolution Procedures) Regulations 1996, SI 1996/1270: New Firefighters' Pension Scheme (England) Pt 8 r 5; New Firefighters' Pension Scheme (Wales) Pt 8 r 5.

TEXT AND NOTES 2-7--SI 1992/129 r H1 amended by SI 2004/1912; and, in relation to England, by SI 2005/2980, SI 2006/1810, and in relation to Wales, by SI 2006/1672, SI 2007/1074. SI 1992/129 r H2 amended by SI 2004/1912; and, in relation to England, by SI 2005/2980, and in relation to Wales, by SI 2006/1672.

TEXT AND NOTES 8, 9--SI 1992/129 r H3 amended, in relation to England, by SI 2005/2980, and in relation to Wales, by SI 2006/1672, so that references to 'fire authority' are now to 'fire and rescue authority'.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(3) PENSIONS/53. Servicemen.

### 53. Servicemen.

For the purposes of the Firemen's Pension Scheme<sup>1</sup> a serviceman<sup>2</sup> is, unless the context otherwise requires or a contrary intention appears, to be treated as having continued to be a regular firefighter<sup>3</sup> during his period of relevant service in the armed forces (referred to, for these purposes, as his 'forces period')<sup>4</sup>.

The scheme provides for awards in respect of a serviceman who, at the end of his forces period, is permanently disabled<sup>5</sup> and in respect of one who dies either during or subsequent to his forces period<sup>6</sup>. The scheme also makes provision for a serviceman who does not resume service in his former brigade<sup>7</sup> and for the calculation of a serviceman's pensionable service<sup>8</sup> and pension contributions<sup>9</sup>.

1 The Firemen's Pension Scheme 1992 is set out in the Firemen's Pension Scheme Order 1992, SI 1992/129, art 2(2), Sch 2 (as amended: see PARA 46 note 1 ante).

2 For these purposes, a 'serviceman' is a person who immediately before undertaking relevant service in the armed forces was a regular firefighter: Firemen's Pension Scheme 1992 r I1(1).

3 For the meaning of 'regular firefighter' see PARA 47 note 2 ante. For these purposes, references to 'relevant service in the armed forces' are references to service specified in the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 ss 42, 44, 52, 63, 64 (all as amended), Sch 1, other than service specified in Sch 1 para 5(b) (repealed) (Firemen's Pension Scheme 1992 r A12(a)); part-time service under the National Service Act 1948, otherwise than pursuant to a training notice under that Act (Firemen's Pension Scheme 1992 r A12(b)); and service for the purposes of training only performed by a person mentioned in the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 Sch 1 para 7 for a period shorter than 7 days (Firemen's Pension Scheme 1992 r A12(c)). See ARMED FORCES.

4 Ibid r I1(2).

5 See ibid r I2.

6 See ibid r I3. The scheme also makes provision in respect of a serviceman injured during his forces period who resumes service as a regular firefighter: see r I4.

7 See ibid r I5.

8 See ibid r I6.

9 See ibid r I7.

## UPDATE

### 45-58 Pensions

Firemen's Pension Scheme continued in force and renamed the Firefighters' Pension Scheme or, in Wales, the Firefighters' Pension (Wales) Scheme: see the Firefighters' Pension Scheme (England and Scotland) Order 2004, SI 2004/2306; and the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004, SI 2004/2918. In relation to England, the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In relation to Wales, the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the



Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1 (Sch 1 amended by SI 2009/1225).

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **53 Servicemen**

TEXT AND NOTES--The 1992 scheme does not apply in relation to persons who took up employment with a fire and rescue authority on or after 6 April 2006: see SI 1992/129 r A3(5) (added by SI 2006/1810 (England), SI 2007/1074 (Wales)). In England the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In Wales the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1. The New Firefighters' Pension Scheme (England) Pt 7 and the New Firefighters' Pension Scheme (Wales) Pt 7 contain provisions relevant to firefighters who serve in the armed forces. For the purposes of the new scheme, a reservist is treated as having continued, throughout his forces period to be a firefighter, and, for the purposes of his pensionable service under the New Firefighters' Pension Scheme (England) Pt 10 and the New Firefighters' Pension Scheme (Wales) Pt 10, to be employed by his former authority: New Firefighters' Pension Scheme (England) Pt 7 r 2(1); New Firefighters' Pension Scheme (Wales) Pt 7 r 2(1). 'Reservist' means a person who, immediately before a forces period, was a firefighter; 'forces period' means the period during which a person undertakes relevant service in the reserve forces; 'former authority', in relation to a reservist, means the authority by which he was employed immediately before his forces period began; and 'relevant service in the reserve forces' means service in the forces specified in the Reserve Forces Act 1996 s 1(2) in pursuance of a training obligation under the 1996 Act Pt 3 (ss 22-27), or by virtue of a call out for permanent service or a recall under the Reserve Forces Act 1980 or the 1996 Act Pt 7 (ss 65-77): New Firefighters' Pension Scheme (England) Pt 7 r 1; New Firefighters' Pension Scheme (Wales) Pt 7 r 1. The new scheme also makes provision for the treatment of any additional service purchased by the reservist before his forces period (New Firefighters' Pension Scheme (England) Pt 7 r 2(2), New Firefighters' Pension Scheme (Wales) Pt 7 r 2(2)), and for the calculation of a reservist's pension contributions (New Firefighters' Pension Scheme (England) Pt 7 r 2(3), New Firefighters' Pension Scheme (Wales) Pt 7 r 2(3)). The new scheme provides for awards in respect of a reservist who, at the end of his forces period, is permanently disabled and in respect of one who dies either during or subsequent to his forces period (New Firefighters' Pension Scheme (England) Pt 7 r 3, New Firefighters' Pension Scheme (Wales) Pt 7 r 3). Provision is also made for a reservist who does not resume service with his former authority: see New Firefighters' Pension Scheme (England) Pt 7 r 4; New Firefighters' Pension Scheme (Wales) Pt 7 r 4.

NOTE 5--SI 1992/129 r I2 amended, in relation to England, by SI 2005/2980, SI 2006/1810, and, in relation to Wales, by SI 2006/1672, SI 2007/1074.

NOTE 6--SI 1992/129 r I3 amended by SI 2004/1912; and, in relation to England, by SI 2005/2980, SI 2005/3228, SI 2006/1810, and, in relation to Wales, by SI 2006/1672, SI 2007/1074. SI 1992/129 r I4 revoked, in relation to England, by SI 2005/2980, and, in relation to Wales, by SI 2007/1074. As to servicemen who resume service as regular firefighters, in relation to England, see now the Firefighters' Compensation Scheme (England) Order 2006, SI 2006/1811, Pt 7 r 4, and, in relation to Wales, see now the Firefighters' Compensation Scheme (Wales) Order 2007, SI 2007/1073, Pt 7 r 4. As to

reservists who resume service as firefighters, in relation to England, see now SI 2006/1811, Pt 7A, r 4 (added by SI 2006/3434), and, in relation to Wales, see now SI 2007/1073, Pt 7A, r 4.

TEXT AND NOTE 7--For 'service in his former brigade' substitute 'employment with his former fire and rescue authority': SI 1992/129 r 15 (amended by SI 2005/2980 (England), SI 2006/1672 (Wales)).

NOTES 8, 9--SI 1992/129 rr 16, 17 amended: SI 2005/2980 (England), SI 2006/1672 (Wales).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(3) PENSIONS/53A. Pension sharing on divorce.

### **53A. Pension sharing on divorce.**

The Firefighters' Pension Scheme<sup>1</sup> makes provision concerning the entitlement to a pension of a pension credit member<sup>2</sup>. Provision is made by the scheme in relation to the commutation of pension credit benefits<sup>3</sup>. The scheme also provides for grants where a pension credit member dies before his pension credit benefits are payable<sup>4</sup>.

The New Firefighters' Pension Scheme (England) and the New Firefighters' Pension Scheme (Wales)<sup>5</sup>, which are the current schemes, make provision on similar terms<sup>6</sup>.

1 The Firefighters' Pension Scheme 1992 is set out in the Firefighters' Pension Scheme Order 1992, SI 1992/129, art 2(2), Sch 2 (see PARA 46 NOTE 1). The 1992 scheme does not apply in relation to persons who took up employment with a fire and rescue authority on or after 6 April 2006: see SI 1992/129 r A3(5) (added by SI 2006/1810 (England), SI 2007/1074 (Wales)). In England the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In Wales the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1.

2 See the Firefighters' Pension Scheme 1992 r IA1 (rr IA1-IA4 added by SI 2001/3619). For the meaning of 'pension credit member' see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 843. Certain provisions of SI 1992/129 are applied to pension credit members by r IA4 (as amended by SI 2005/2980 (England), SI 2006/1810 (England), SI 2006/1672 (Wales), SI 2007/1074 (Wales)).

3 See *ibid* r 1A2 (amended by SI 2005/2980 (England)).

4 See *ibid* r IA3.

5 See NOTE 1.

6 See the New Firefighters' Pension Scheme (England) Pt 6 and the New Firefighters' Pension Scheme (Wales) Pt 6.

## **UPDATE**

### **45-58 Pensions**

Firemen's Pension Scheme continued in force and renamed the Firefighters' Pension Scheme or, in Wales, the Firefighters' Pension (Wales) Scheme: see the Firefighters' Pension Scheme (England and Scotland) Order 2004, SI 2004/2306; and the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004, SI 2004/2918. In relation to England, the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In relation to Wales, the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1 (Sch 1 amended by SI 2009/1225).

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(3) PENSIONS/54. Special cases.

#### **54. Special cases.**

The Firemen's Pension Scheme<sup>1</sup> imposes restrictions on the payment of guaranteed minimum pensions where an entitled person continues to serve as a regular firefighter<sup>2</sup> after attaining state pensionable age<sup>3</sup> or by reason of a decision taken by the fire authority<sup>4</sup>. The scheme prevents the payment of such a pension where the entitled person remarries before attaining state pensionable age<sup>5</sup>.

The scheme also makes provision for awards to be made in certain circumstances to whole-time members of brigades who are not regular firefighters<sup>6</sup> and part-time members of brigades<sup>7</sup> but generally excludes from the scheme members of brigades other than regular firefighters<sup>8</sup>.

1 The Firemen's Pension Scheme 1992 is set out in the Firemen's Pension Scheme Order 1992, SI 1992/129, art 2(2), Sch 2 (as amended: see PARA 46 note 1 ante).

2 For the meaning of 'regular firefighter' see PARA 47 note 2.

3 See SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 562.

4 See under the Firemen's Pension Scheme 1992 r K4: see PARA 55 text and note 13 post. As to fire authorities see PARA 17 et seq ante.

5 See *ibid* r J1. The scheme also provides for the revaluation of a guaranteed minimum pension where a person has ceased to serve as a regular firefighter or has elected under r G3 (see PARA 51 ante) not to pay pension contributions and has taken a right to a cash equivalent by exercising the option conferred by the Pensions Schemes Act 1993 s 95(1) (see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 954): see the Firemen's Pension Scheme 1992 r J2.

6 See *ibid* r J3. As to whole-time members see PARA 47 note 2 ante.

7 See *ibid* r J4.

8 See *ibid* r J5. Other special cases are dealt with in r J6, Sch 11 Pts IV, V: see r J6.

### **UPDATE**

#### **45-58 Pensions**

Firemen's Pension Scheme continued in force and renamed the Firefighters' Pension Scheme or, in Wales, the Firefighters' Pension (Wales) Scheme: see the Firefighters' Pension Scheme (England and Scotland) Order 2004, SI 2004/2306; and the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004, SI 2004/2918. In relation to England, the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In relation to Wales, the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1 (Sch 1 amended by SI 2009/1225).

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## 54 Special cases

TEXT AND NOTES--The 1992 scheme does not apply in relation to persons who took up employment with a fire and rescue authority on or after 6 April 2006: see SI 1992/129 r A3(5) (added by SI 2006/1810 (England), SI 2007/1074 (Wales)). In England the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In Wales the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1. For provision relating to guaranteed minimum pensions and survivors' guaranteed minimum pensions, see the New Firefighters' Pension Scheme (England) Pt 15 rr 1, 2 and the New Firefighters' Pension Scheme (Wales) Pt 15 rr 1, 2.

NOTE 5--SI 1992/129 r J1 amended, in relation to England, by SI 2005/2980, SI 2005/3228, SI 2006/1810, and, in relation to Wales, by SI 2006/1672, SI 2007/1074.

TEXT AND NOTE 6--SI 1992/129 r J3 revoked, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074. As to an award for or in relation to an employee who is not a regular or retained firefighter, in relation to England, see now the Firefighters' Compensation Scheme (England) Order 2006, SI 2006/1811, Pt 8 r 1 (amended by SI 2006/3434), and, in relation to Wales, see now the Firefighters' Compensation Scheme (Wales) Order 2007, SI 2007/1073, Pt 8 r 1.

TEXT AND NOTE 7--SI 1992/129 r J4 revoked, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074. As to an award for or in relation to a retained or volunteer firefighter, in relation to England, see SI 2006/1811 (TEXT AND NOTE 6) Pt 8 r 2 (amended by SI 2006/3434), and, in relation to Wales, see SI 2007/1073 (TEXT AND NOTE 6) Pt 8 r 2.

TEXT AND NOTE 8--SI 1992/129 r J5 revoked, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074. As to employees other than regular firefighters, in relation to England, see SI 2006/1811 (TEXT AND NOTE 6) Pt 8 r 3, and, in relation to Wales, see SI 2007/1073 (TEXT AND NOTE 6) Pt 8 r 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(3) PENSIONS/55. Revision and withdrawal of awards.

## **55. Revision and withdrawal of awards.**

The Firemen's Pension Scheme<sup>1</sup> provides that as long as a person is in receipt of an ill-health pension, and would not, if he had continued to serve as a regular firefighter<sup>2</sup> instead of retiring with an ill-health pension, have become entitled to retire with an ordinary pension, and if he had continued so to serve, could not have been required to retire on account of age, the fire authority may, if it wishes to exercise its powers<sup>3</sup>, consider, at such intervals as it in its discretion thinks proper, whether he has become capable of performing the duties of a regular firefighter<sup>4</sup>. The fire authority may also make the same consideration in the case of a person who has elected not to pay pension contributions<sup>5</sup>, and is entitled to a deferred pension<sup>6</sup>, and has begun to receive payments in respect of the pension on becoming permanently disabled<sup>7</sup>.

If on any such consideration it is found that he has become capable of performing the duties of a regular firefighter, the authority may terminate the unsecured portion of his ill-health pension or, where appropriate<sup>8</sup>, may determine that payment of the deferred pension is to be suspended, that is to say, that the pension is not to be payable in respect of any period before he attains the age of 60<sup>9</sup>.

If within one month after the termination or suspension he presents himself for service in the brigade the fire authority is to permit him to resume service forthwith in a rank not lower than the rank he held when he retired with the pension, and if it does not, the termination or suspension is deemed never to have taken effect<sup>10</sup>.

The scheme makes provision for the reassessment of an injury pension and for its termination where it is found that the disability has ceased<sup>11</sup>. The scheme also provides for the reduction of an award in a case where a person is permanently disabled and has brought about or contributed to his infirmity by his own default<sup>12</sup>.

A fire authority by whom a pension is payable may withdraw it where the entitled person is serving as a regular firefighter in any brigade<sup>13</sup> or on conviction by the entitled person of certain criminal offences<sup>14</sup>.

An award under the scheme (other than a flat-rate award) may qualify for increase in pursuance of the general arrangements relating to the increase of public service pensions<sup>15</sup>.

1 The Firemen's Pension Scheme 1992 is set out in the Firemen's Pension Scheme Order 1992, SI 1992/129, art 2(2), Sch 2 (as amended: see PARA 46 note 1 ante).

2 For the meaning of 'regular firefighter' see PARA 47 note 2 ante.

3 I.e. the powers conferred by the Firemen's Pension Scheme 1992 r K1. As to fire authorities see PARA 17 et seq ante.

4 Ibid r K1(1).

5 I.e. under ibid r G3: see PARA 51 ante.

6 I.e. under ibid r B5: see PARA 49 ante.

7 Ibid r K1(2).

8 I.e. in a case falling within ibid r K1(2): see the text and note 7 supra.

9 Ibid r K1(3).

10 Ibid r K1(4). Where the unsecured portion of an ill-health pension is terminated, or payment of a deferred pension is suspended, under this rule, the secured portion of an ill-health pension is not payable in respect of any period before the person attains state pensionable age, any injury pension to which he is entitled is also terminated, and unless he is entitled to a deferred pension, he is paid the amount, if any, by which his aggregate pension contributions exceed the amount specified in r K1(6): r K1(5).

11 See *ibid* r K2.

12 See *ibid* r K3.

13 See *ibid* r K4.

14 See *ibid* r K5.

15 See the Pensions (Increase) Act 1971 s 5 (as amended), Sch 2 paras 16, 44; the Increase of Pensions (Police and Fire Services) Regulations 1971, SI 1971/1330 (amended by SI 1973/432; SI 1973/965); the Pensions (Increase) Act 1974 ss 1, 2 (both as amended); the Pensions Increase (Modification) (Police and Fire Services) Regulations 1974, SI 1974/1531; the Pensions Increase (Police and Fire Services) Regulations 1974, SI 1974/1532; the Social Security Pensions Act 1975 s 59 (as amended); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 614 et seq.

## **UPDATE**

### **45-58 Pensions**

Firemen's Pension Scheme continued in force and renamed the Firefighters' Pension Scheme or, in Wales, the Firefighters' Pension (Wales) Scheme: see the Firefighters' Pension Scheme (England and Scotland) Order 2004, SI 2004/2306; and the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004, SI 2004/2918. In relation to England, the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In relation to Wales, the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1 (Sch 1 amended by SI 2009/1225).

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **55 Revision and withdrawal of awards**

TEXT AND NOTES--The 1992 scheme does not apply in relation to persons who took up employment with a fire and rescue authority on or after 6 April 2006: see SI 1992/129 r A3(5) (added by SI 2006/1810 (England), SI 2007/1074 (Wales)). In England the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In Wales the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1. Under the new scheme so long as a person has been in receipt of an ill-health pension for less than ten years, and is under state pensionable age, the authority must consider, at such intervals as it thinks proper, whether he has become capable (1) of performing any duty appropriate to the role from which he retired on grounds of ill-health; and (2) of undertaking regular employment: New Firefighters' Pension Scheme (England) Pt 9 r 1(1); New Firefighters' Pension Scheme (Wales) Pt 9 r 1(1). If, on such consideration, it is found that a person who is in receipt of a higher tier ill-health pension has become capable of undertaking regular employment, his entitlement to that pension ceases with immediate effect: New Firefighters' Pension

Scheme (England) Pt 9 r 2(1); New Firefighters' Pension Scheme (Wales) Pt 9 r 2(1). A lower tier ill-health pension may continue to be paid to a person who ceases to be entitled to a higher tier ill-health pension: New Firefighters' Pension Scheme (England) Pt 9 r 2(2); New Firefighters' Pension Scheme (Wales) Pt 9 r 2(2). However, if (a) on such consideration, it is found that a person who is in receipt of a lower tier ill-health pension has become capable of performing the duties appropriate to the role from which he retired on grounds of ill-health; and (b) the authority make him an offer of employment in that role, his entitlement to a lower tier ill-health pension ceases, with immediate effect, whether he accepts or declines the offer: New Firefighters' Pension Scheme (England) Pt 9 r 2(3); New Firefighters' Pension Scheme (Wales) Pt 9 r 2(3). A person who accepts or declines an offer under head (b) above becomes entitled to a deferred pension under the New Firefighters' Pension Scheme (England) Pt 3 r 3 and the New Firefighters' Pension Scheme (Wales) Pt 3 r 3: New Firefighters' Pension Scheme (England) Pt 9 r 2(4); New Firefighters' Pension Scheme (Wales) Pt 9 r 2(4). The authority must, at such intervals as it thinks proper, consider in relation to a person whose deferred pension is being paid early by virtue of the New Firefighters' Pension Scheme (England) Pt 3 r 3(4) and the New Firefighters' Pension Scheme (Wales) Pt 3 r 3(4) (early payment of deferred pension on permanent disablement), the same matters as they are required to consider in relation to persons of the description mentioned in the New Firefighters' Pension Scheme (England) Pt 9 r 1(1) and the New Firefighters' Pension Scheme (Wales) Pt 9 r 1(1): New Firefighters' Pension Scheme (England) Pt 9 r 1(2); New Firefighters' Pension Scheme (Wales) Pt 9 r 1(2). If, on such consideration, it is found that a person whose deferred pension is being paid early has become capable of undertaking regular employment, his entitlement to early payment of the deferred pension ceases with immediate effect: New Firefighters' Pension Scheme (England) Pt 9 r 2(5); New Firefighters' Pension Scheme (Wales) Pt 9 r 2(5). 'Higher tier ill-health pension' means a pension of the description referred to in the New Firefighters' Pension Scheme (England) Pt 3 r 2(4) and the New Firefighters' Pension Scheme (Wales) Pt 3 r 2(4); 'lower tier ill-health pension' means a pension of the description referred to in the New Firefighters' Pension Scheme (England) Pt 3 r 2(3) and the New Firefighters' Pension Scheme (Wales) Pt 3 r 2(3): New Firefighters' Pension Scheme (England) Pt 1 r 2; New Firefighters' Pension Scheme (Wales) Pt 1 r 2.

The new scheme provides that the authority by which a pension under the New Firefighters' Pension Scheme (England) Pt 3 and the New Firefighters' Pension Scheme (Wales) Pt 3 is payable may withdraw the whole or any part of the pension for any period during which the person entitled to it is again employed as a firefighter by any authority: see New Firefighters' Pension Scheme (England) Pt 9 r 3; New Firefighters' Pension Scheme (Wales) Pt 9 r 3. The new scheme also provides that a person who, on dismissal from an authority's employment, becomes entitled to a deferred pension under the New Firefighters' Pension Scheme (England) Pt 3 r 3 and the New Firefighters' Pension Scheme (Wales) Pt 3 r 3, is not entitled to early payment of the deferred pension before reaching the age of 65, unless the authority by which the pension is payable determines otherwise: New Firefighters' Pension Scheme (England) Pt 9 r 4; New Firefighters' Pension Scheme (Wales) Pt 9 r 4. Provision is made for the authority to withdraw a pension where a pensioner has been convicted of certain offences: see New Firefighters' Pension Scheme (England) Pt 9 r 5; New Firefighters' Pension Scheme (Wales) Pt 9 r 5. A person who has been convicted of an offence under the Fire and Rescue Services Act 2004 s 34(6) (acts or omissions for purposes of obtaining awards or other sums), forfeits the whole or part of an award or sum obtained by him under the new scheme, as the authority thinks fit: New Firefighters' Pension Scheme (England) Pt 9 r 6; New Firefighters' Pension Scheme (Wales) Pt 9 r 6.



TEXT AND NOTES 1-10--SI 1992/129 r K1, in relation to England, substituted by SI 2006/1810, and, in relation to Wales, substituted by SI 2007/1074. SI 1992/129 r K1A added: SI 2006/1810 (England), SI 2007/1074 (Wales).

TEXT AND NOTE 11--SI 1992/129 r K2 revoked, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074. As to reduction of an award in case of default, in relation to England, see the Firefighters' Compensation Scheme (England) Order 2006, SI 2006/1811, Pt 9 r 2 (amended by SI 2006/3434), and, in relation to Wales, see the Firefighters' Compensation Scheme (Wales) Order 2007, SI 2007/1073, Pt 9 r 2.

NOTE 12--SI 1992/129 r K3 amended, in relation to England, by SI 2005/2980, SI 2006/1810, and, in relation to Wales, by SI 2006/1672, SI 2007/1074.

TEXT AND NOTE 13--SI 1992/129 r K4 amended by SI 2004/1912; and, in relation to England, by SI 2005/2980, SI 2005/3228, and, in relation to Wales, by SI 2006/1672, so as to substitute 'fire and rescue authority' for 'fire authority' and to substitute 'employed as a regular firefighter by any fire and rescue authority' for 'serving as a regular firefighter in any brigade'.

TEXT AND NOTE 14--SI 1992/129 r K5 amended by SI 2004/1912; and, in relation to England, by SI 2005/2980, SI 2005/3228, SI 2006/1810, and, in relation to Wales, by SI 2006/1672, SI 2007/1074.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(3) PENSIONS/56. Payment of awards and financial provisions.

## **56. Payment of awards and financial provisions.**

Under the Firemen's Pension Scheme<sup>1</sup> an award payable to or in respect of a person by reason of his having been employed as a regular firefighter<sup>2</sup> is payable by the fire authority by whom he was last so employed<sup>3</sup>. An award payable to or in respect of a person by reason of his having received an injury while employed as a member of a brigade but not as a regular firefighter is payable by the fire authority by whom he was employed when he received the injury<sup>4</sup>.

Every fire authority must maintain an account showing all sums received or paid by it under or for the purposes of the scheme, or in consequence of rights acquired and obligations incurred by it under the Firemen's Pension Scheme 1973 and previous Firemen's Pension Schemes<sup>5</sup>.

While a pension or allowance is payable, it is payable in respect of each week, and the fire authority is to discharge its liability in respect of it by making payments in advance at such reasonable intervals as it may determine, but payment may be delayed to the extent necessary for determining any question as to the liability of the fire authority<sup>6</sup>.

Any sum payable to a minor in respect of an award may, if the fire authority thinks fit, be paid by it to such other person as it may determine, who must, in accordance with any directions given by the authority, apply it for the minor's benefit<sup>7</sup>. If it appears to the fire authority that a person entitled to payment of an award is, by reason of mental disorder or otherwise, incapable of managing his affairs it may in its discretion pay the award or any part of it to a person having the care of the person entitled, or such other person as it may determine, and in so far as it does not pay the award in that manner, it may apply it in such manner as it thinks fit for the benefit of the person entitled or his dependants<sup>8</sup>.

There are also provisions in relation to the payment by a fire authority of awards to beneficiaries on death without requiring the production of probate<sup>9</sup>; the assignment of or charge on an award<sup>10</sup>; the bankruptcy of a person entitled to an award<sup>11</sup>; the loss of funds arising from fraud, theft or negligence on the part of a regular firefighter<sup>12</sup>; those parts of an award which may not be withheld<sup>13</sup>; and the provision of a certificate in relation to any amount withheld from an award<sup>14</sup>.

1 The Firemen's Pension Scheme 1992 is set out in the Firemen's Pension Scheme Order 1992, SI 1992/129, art 2(2), Sch 2 (as amended: see PARA 46 note 1 ante).

2 For the meaning of 'regular firefighter' see PARA 47 note 2 ante.

3 Firemen's Pension Scheme 1992 r L1(1). As to fire authorities see PARA 17 et seq ante. There are regulations which impose a duty on the fire authority to disclose certain information about the scheme to its members: see the Occupational Pension Schemes (Disclosure of Information) Regulations 1996, SI 1996/1655 (amended by SI 1997/786; SI 1997/3038; and SI 1999/3198); the Occupational Pension Schemes (Managers) Regulations 1986, SI 1986/1718 (amended by SI 1986/1718; SI 1994/1062); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 577; SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 800.

4 The Firemen's Pension Scheme 1992 r L1(2).

5 Ibid r L2. As to the 1973 scheme and previous Firemen's Pension Schemes see PARA 45 ante.

6 See the Firemen's Pension Scheme 1992 r L3(1). There are provision restricting the circumstances in which advance payments may be reclaimed following the cessation of entitlement (see r L3(2), (3)) and the dates from which specific awards become payable (see r L3(4)-(8)). There are also provisions in respect of persons entitled in any period to two or more pensions and the circumstances in which certain pensions are to be treated as one: see r L4.

7 Ibid r L5(1).

8 Ibid r L5(2). As to management of a mentally disordered patient's property and affairs see MENTAL HEALTH vol 30(2) (Reissue) PARA 671 et seq.

9 See ibid r L5(3).

10 See ibid r L5(4).

11 See ibid r L5(5).

12 See ibid r L5(6), (7).

13 See ibid r L5(8).

14 See ibid r L5(9). For the purposes of r L5 a reference to an award is a reference to a pension, allowance, gratuity or other award under this scheme: r L5(10).

## **UPDATE**

### **45-58 Pensions**

Firemen's Pension Scheme continued in force and renamed the Firefighters' Pension Scheme or, in Wales, the Firefighters' Pension (Wales) Scheme: see the Firefighters' Pension Scheme (England and Scotland) Order 2004, SI 2004/2306; and the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004, SI 2004/2918. In relation to England, the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In relation to Wales, the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1 (Sch 1 amended by SI 2009/1225).

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **56 Payment of awards and financial provisions**

TEXT AND NOTES--The 1992 scheme does not apply in relation to persons who took up employment with a fire and rescue authority on or after 6 April 2006: see SI 1992/129 r A3(5) (added by SI 2006/1810 (England), SI 2007/1074 (Wales)). In England the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In Wales the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1. Under the new scheme an award payable to or in respect of a person by reason of his having been employed as a regular firefighter is payable by the authority by whom he was last so employed: New Firefighters' Pension Scheme (England) Pt 14 r 1(1); New Firefighters' Pension Scheme (Wales) Pt 14 r 1(1). An award payable under the New Firefighters' Pension Scheme (England) Pt 6 and the New Firefighters' Pension Scheme (Wales) Pt 6 (pension-sharing on divorce) (see PARA 53A) to or in respect of a pension credit member, and any sum paid in commutation of such an award, is payable by the authority which employed the pension debit member from whose rights the pension credit member's award is derived when the pension sharing order took effect: New Firefighters' Pension Scheme (England) Pt 14 r 1(2); New Firefighters' Pension Scheme (Wales) Pt 14 r 1(2). Where any payment that an authority is required to make under the new scheme is chargeable to tax or subject to a lifetime allowance

charge under the Finance Act 2004, it must deduct the amount of tax charged or to be recovered from the payment: New Firefighters' Pension Scheme (England) Pt 14 r 2; New Firefighters' Pension Scheme (Wales) Pt 14 r 2. While an award is payable under the new scheme it is paid monthly in arrears (New Firefighters' Pension Scheme (England) Pt 14 r 3(1), New Firefighters' Pension Scheme (Wales) Pt 14 r 3(1)), however, the authority may (1) delay payment, in whole or part, to the extent necessary for determining any question as to its liability; and (2) where it is of the opinion that, by reason of the amount of the award, its payment monthly in arrears would be impracticable, discharge its liability in respect of it by making payments at such reasonable intervals as it thinks fit (New Firefighters' Pension Scheme (England) Pt 14 r 3(2), New Firefighters' Pension Scheme (Wales) Pt 14 r 3(2)). Lump sums under the New Firefighters' Pension Scheme (England) Pt 5 and the New Firefighters' Pension Scheme (Wales) Pt 5 and, subject to the New Firefighters' Pension Scheme (England) Pt 14 r 3(4), (5) and the New Firefighters' Pension Scheme (Wales) Pt 14 r 3(4), (5), pensions under the New Firefighters' Pension Scheme (England) Pt 4 and the New Firefighters' Pension Scheme (Wales) Pt 4 are payable from the day after the date of the death: New Firefighters' Pension Scheme (England) Pt 14 r 3(3); New Firefighters' Pension Scheme (Wales) Pt 14 r 3(3). A pension under the New Firefighters' Pension Scheme (England) Pt 4 and the New Firefighters' Pension Scheme (Wales) Pt 4 in respect of a posthumous child is payable from the date of his birth: New Firefighters' Pension Scheme (England) Pt 14 r 3(4); New Firefighters' Pension Scheme (Wales) Pt 14 r 3(4). Where the authority is not informed of the death of a pensioner, and a pension to which he was entitled has continued in payment, the authority may recover all or part of the overpayment, as it thinks fit; and may recover it by set-off against any other award payable under this scheme in respect of the deceased: New Firefighters' Pension Scheme (England) Pt 14 r 3(5); New Firefighters' Pension Scheme (Wales) Pt 14 r 3(5). Where a person is entitled under the New Firefighters' Pension Scheme (England) Pt 3 r 8 and the New Firefighters' Pension Scheme (Wales) Pt 3 r 8 to the repayment of his aggregate pension contributions, the authority is not obliged to make payment until the expiration of a year from the date of his retirement, or until he requests payment, whichever is the earlier: New Firefighters' Pension Scheme (England) Pt 14 r 3(6); New Firefighters' Pension Scheme (Wales) Pt 14 r 3(6). Where a person is a member of the scheme in respect of more than one contract of employment (whether with the same or different authorities), each employment is treated separately for pension purposes: New Firefighters' Pension Scheme (England) Pt 14 r 4; New Firefighters' Pension Scheme (Wales) Pt 14 r 4.

Under the new scheme, any sum payable to a minor in respect of an award may, if the authority thinks fit, be paid to such other person as it may determine, who must, in accordance with any directions given by the authority, apply it for the minor's benefit: New Firefighters' Pension Scheme (England) Pt 14 r 5(1); New Firefighters' Pension Scheme (Wales) Pt 14 r 5(1). If it appears to the authority that a person entitled to payment of an award is, by reason of mental disorder or otherwise, incapable of managing his affairs it may pay the award or any part of it to a person having the care of the person entitled, or such other person as it may determine, and, insofar as it does not pay the award in that manner, it may apply it in such manner as it thinks fit for the benefit of the person entitled or his dependants: New Firefighters' Pension Scheme (England) Pt 14 r 5(2); New Firefighters' Pension Scheme (Wales) Pt 14 r 5(2).

The new scheme also makes provision for payment by a fire authority of awards to beneficiaries on death without requiring the production of probate (New Firefighters' Pension Scheme (England) Pt 14 r 6(1), New Firefighters' Pension Scheme (Wales) Pt 14 r 6(1)), the assignment of or charge on an award (New Firefighters' Pension Scheme (England) Pt 14 r 6(2), New Firefighters' Pension Scheme (Wales) Pt 14 r 6(2)), the bankruptcy of a person entitled to an award (New Firefighters' Pension Scheme

(England) Pt 14 r 6(3), New Firefighters' Pension Scheme (Wales) Pt 14 r 6(3)), and the loss of funds arising from fraud, theft or negligence on the part of a firefighter (New Firefighters' Pension Scheme (England) Pt 14 r 6(4)-(7), New Firefighters' Pension Scheme (Wales) Pt 14 r 6(4)-(7)).

As to the requirement for each fire and rescue authority to establish and maintain a Firefighters' Pension Fund for the purposes of the Firemen's Pension Scheme, see the New Firefighters' Pension Scheme (England) Pt 13 and the New Firefighters' Pension Scheme (Wales) Pt 13.

TEXT AND NOTES 2, 3--An award payable to or in respect of a person by reason of his having been employed as a regular firefighter is payable by the fire and rescue authority by whom he was last so employed, or, where his employment ceased before 1 October 2004, by the fire and rescue authority which inherited the liabilities of the fire authority which last employed him: SI 1992/129 r L1(1) amended by SI 2005/2980 (England), SI 2006/1672 (Wales).

NOTE 3--SI 1996/1655 further amended: SI 2000/1403, SI 2005/704, SI 2005/706, SI 2005/2877, SI 2005/3377, SI 2006/467, SI 2006/1733, SI 2007/60, SI 2007/814, SI 2008/649, SI 2009/598, SI 2009/615.

TEXT AND NOTE 4--SI 1992/129 r L1(2) revoked, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074.

TEXT AND NOTE 5--SI 1992/129 r L2 revoked, in relation to England, by SI 2006/1810, and, in relation to Wales, by SI 2007/1074.

TEXT AND NOTE 6--SI 1992/129 r L3 amended, in relation to England, by SI 2005/2980, SI 2005/3228, SI 2006/1810, and, in relation to Wales, by SI 2006/1672, SI 2007/1074. SI 1992/129 r L4 amended by SI 2001/3619, SI 2004/1912; and, in relation to England, by SI 2005/3228, SI 2006/1810, and, in relation to Wales, by SI 2006/1672, SI 2007/1074. As to the prevention of duplication, in relation to England, see the Firefighters' Compensation Scheme (England) Order 2006, SI 2006/1811, Pt 10 rr 4, 5 (substituted by SI 2006/3434), and, in relation to Wales, see the Firefighters' Compensation Scheme (Wales) Order 2007, SI 2007/1073, Pt 10 rr 4, 5.

TEXT AND NOTES 7-14--SI 1992/129 r L5 amended, in relation to England, by SI 2005/2980, and, in relation to Wales, by SI 2006/1672, so that references to 'fire authority' are now to 'fire and rescue authority'.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(3) PENSIONS/57. Awards obtained by fraud.

## **57. Awards obtained by fraud.**

If a person obtains or attempts to obtain for himself or any other person any award under the Firemen's Pension Scheme<sup>1</sup>, or any sum in respect of the repayment or application of contributions made under the scheme, by maiming or injuring himself, or causing himself to be maimed or injured, or otherwise producing disease or infirmity he is liable on conviction on indictment to imprisonment<sup>2</sup>, or on summary conviction to imprisonment<sup>3</sup> or a fine<sup>4</sup>. The scheme may authorise, in the case of a person who has been convicted of such an offence, the forfeiture, in whole or in part, of any award or sum so obtained<sup>5</sup>.

<sup>1</sup> The Firemen's Pension Scheme 1992 is set out in the Firemen's Pension Scheme Order 1992, SI 1992/129, art 2(2), Sch 2 (as amended: see PARA 46 note 1 ante).

<sup>2</sup> I.e. imprisonment for a term not exceeding two years: see the Fire Services Act 1947 s 26(4) (amended by the Theft Act 1968 s 33(3), Sch 3 Pt I; and the Magistrates Court Act 1980 s 32).

<sup>3</sup> I.e. imprisonment for a term not exceeding three months: see the Fire Services Act 1947 s 26(4) (as amended: see note 2 supra).

<sup>4</sup> I.e. a fine not exceeding the prescribed sum: see *ibid* s 26(4) (as amended: see note 2 supra). The 'prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1) (as substituted): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 141.

<sup>5</sup> Fire Services Act 1947 s 26(4) (as amended: see note 2 supra). See also PARA 55 ante. The reference in the text to the authorisation upon conviction of the forfeiture of any award or sum obtained by fraud is without prejudice to s 26(2)(j) (see PARA 46 ante): s 26(4) (as so amended).

## **UPDATE**

### **45-58 Pensions**

Firemen's Pension Scheme continued in force and renamed the Firefighters' Pension Scheme or, in Wales, the Firefighters' Pension (Wales) Scheme: see the Firefighters' Pension Scheme (England and Scotland) Order 2004, SI 2004/2306; and the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004, SI 2004/2918. In relation to England, the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In relation to Wales, the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1 (Sch 1 amended by SI 2009/1225).

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **57 Awards obtained by fraud**

TEXT AND NOTES--The 1992 scheme does not apply in relation to persons who took up employment with a fire and rescue authority on or after 6 April 2006: see SI 1992/129 r

A3(5) (added by SI 2006/1810 (England), SI 2007/1074 (Wales)). In England the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In Wales the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1.

1947 Act replaced by the Fire and Rescue Services Act 2004. A person commits an offence if he does an act or makes an omission as a result of which he is injured or becomes ill, for the purpose of obtaining, for himself or another person an award under a scheme brought into operation under s 34, or a sum in respect of the repayment or application of contributions made under such a scheme: s 34(6). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding 12 months (or in relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 154(1) a term not exceeding 3 months) or a fine not exceeding the statutory maximum and, on conviction on indictment, to imprisonment for a term not exceeding 2 years: s 34(7), (9). As to the statutory maximum see PARA 75 NOTE 25. A scheme brought into operation under s 34 may authorise the forfeiture of the whole or part of an award or sum obtained by a person who has been convicted of an offence under s 34(6): s 36(8). See the New Firefighters' Pension Scheme (England) Pt 9 r 6 and the New Firefighters' Pension Scheme (Wales) Pt 9 r 6.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/3. FIRE BRIGADES/(3) PENSIONS/58. Compensation for loss of employment etc.

## **58. Compensation for loss of employment etc.**

Provision is made for every person<sup>1</sup> who suffers loss of employment as a regular firefighter or loss or diminution of emoluments which is attributable to local government reorganisation<sup>2</sup> to have his case considered for the payment of compensation<sup>3</sup>.

Certain senior fire service officers who were serving as such on 24 December 1973 and retired before 1 April 1974 qualify for the payment of benefits by way of pension or allowance in lieu of such compensation<sup>4</sup>.

<sup>1</sup> I.e. every person to whom the Fire Services (Compensation) Regulations 1965, SI 1965/563, (as amended) or the Fire Services (Compensation) Regulations 1974, SI 1974/540, apply: see the Fire Services (Compensation) Regulations 1965, SI 1965/563, Pt I reg 2; Fire Services (Compensation) Regulations 1974, SI 1974/540, Pt II reg 4. The regulations apply to any person who was serving immediately before the material date as a regular fireman, or would have been so serving at that time but for any national service on which he was then engaged: Fire Services (Compensation) Regulations 1965, SI 1965/563, Pt I reg 1; Fire Services (Compensation) Regulations 1974, SI 1974/540, Pt II reg 3(1). The Fire Services (Compensation) Regulations 1974, SI 1974/540, do not apply to a person duly entitled within the meaning of the Fire Services (Retirement of Senior Officers) Regulations 1973, SI 1973/1951 (as amended): see the Fire Services (Compensation) Regulations 1974, SI 1974/540, Pt II reg 3(2); and the text and note 4 infra. For these purposes 'regular fireman' means a member of a fire brigade of a class prescribed by the Firemen's Pension Scheme for the purposes of the Fire Services Act 1951 s 2 (as amended) (see PARA 45 ante): Fire Services (Compensation) Regulations 1965, SI 1965/563, Pt VII reg 37(1); Fire Services (Compensation) Regulations 1974, SI 1974/540, Pt I reg 2(1). As to the Firemen's Pension Scheme 1992 see PARA 46 et seq ante. See also PARA 47 note 2 ante.

<sup>2</sup> I.e. attributable to the provisions of any order made under the Local Government Act 1958 Pt II (ss 19-45) (repealed) or under the Local Government Act 1933 Pt VI (ss 129-155) (repealed), or the provisions of the London Government Act 1963 or any instrument made under it, or any provision of the Local Government Act 1972 or the National Health Service Reorganisation Act 1973 (repealed) or of any instrument made under either Act: see the Fire Services (Compensation) Regulations 1965, SI 1965/563, Pt I reg 2; the Fire Services (Compensation) Regulations 1974, SI 1974/540, Pt II reg 4(1).

<sup>3</sup> Fire Services (Compensation) Regulations 1965, SI 1965/563, Pt I reg 2; Fire Services (Compensation) Regulations 1974, SI 1974/540, Pt II reg 4(1). As to loss consequential on a fire service combination scheme see PARA 26 text and note 7 ante.

<sup>4</sup> See the Local Government Act 1972 s 260; and the Fire Services (Retirement of Senior Officers) Regulations 1973, SI 1973/1951 (amended by SI 1973/2023).

## **UPDATE**

### **45-58 Pensions**

Firemen's Pension Scheme continued in force and renamed the Firefighters' Pension Scheme or, in Wales, the Firefighters' Pension (Wales) Scheme: see the Firefighters' Pension Scheme (England and Scotland) Order 2004, SI 2004/2306; and the Fire and Rescue Services Act 2004 (Firefighters' Pension Scheme) (Wales) Order 2004, SI 2004/2918. In relation to England, the current scheme is the New Firefighters' Pension Scheme (England), set out in the Firefighters' Pension Scheme (England) Order 2006, SI 2006/3432, art 2, Sch 1 (Sch 1 amended by SI 2008/213). In relation to Wales, the current scheme is the New Firefighters' Pension Scheme (Wales), set out in the Firefighters' Pension Scheme (Wales) Order 2007, SI 2007/1072, art 2, Sch 1 (Sch 1 amended by SI 2009/1225).



Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(1) POWERS AND DUTIES OF FIRE AUTHORITIES AND PERSONNEL/59. The nature of fire-fighting purposes.

## **4. FIRE-FIGHTING**

### **(1) POWERS AND DUTIES OF FIRE AUTHORITIES AND PERSONNEL**

#### **59. The nature of fire-fighting purposes.**

It is the duty of every fire authority<sup>1</sup> in Great Britain to make provision for fire-fighting purposes<sup>2</sup>. 'Fire-fighting purposes' means the purposes of the extinction of fires and the protection of life and property in case of fire<sup>3</sup>. Particular matters which come within this general duty are mentioned elsewhere in this title<sup>4</sup>, but it seems that they do not exhaust the powers or duties of fire authorities to make provision for fire-fighting purposes<sup>5</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 Fire Services Act 1947 s 1(1). As to a fire authority's liability in damages for failure to carry out its statutory duties see *Dawson & Co v Bingley UDC* [1911] 2 KB 149 at 153, CA, per Vaughan Williams LJ (distinguished in *Capital and Counties plc v Hampshire County Council* [1997] QB 1004, [1997] 2 All ER 865); *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149 at 176, [1953] 1 All ER 179 at 194-195, CA, per Lord Evershed MR; *Glossop v Heston and Isleworth Local Board* (1878) 12 ChD 102, CA. As to the liability of a public body for the negligent exercise of its statutory powers see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 189. As to breach of statutory duty see TORT vol 97 (2010) PARA 495 et seq.

3 Fire Services Act 1947 s 38(1). See also PARA 60 post.

4 See PARA 60 et seq post. As to the general functions of fire authorities in relation to civil defence see PARA 73 post.

5 See PARA 60 text to notes 4-5 post.

## **UPDATE**

### **59-62 The nature of fire-fighting purposes ... Fires at sea**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **59 The nature of fire-fighting purposes**

TEXT AND NOTES--1947 Act replaced by the Fire and Rescue Services Act 2004. A fire and rescue authority (see PARA 17) must make provision for the purpose of extinguishing fires in its area and protecting life and property in the event of fires in its area: s 7(1).

Further, a fire and rescue authority must make provision for the purpose of rescuing people in the event of road traffic accidents and protecting people from serious harm in the event of road traffic accidents in its area: s 8(1). In making such provision, the authority must in particular (1) secure the provision of the personnel, services and equipment necessary efficiently to meet all normal requirements; (2) secure the provision of training for personnel; (3) make arrangements for dealing with calls for help and for summoning personnel; (4) make arrangements for obtaining relevant

information; (5) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken: s 8(2).

The Secretary of State or, in relation to Wales, the National Assembly for Wales may by order, after appropriate consultation, confer on a fire and rescue authority functions relating to emergencies other than fires and road traffic accidents in relation to which the authority has functions under s 7 or 8, and such an order may require functions so conferred to be discharged outside the authority's area: s 9(1), (2), (5). See the Fire and Rescue Services (Emergencies) (England) Order 2007, SI 2007/735; and the Fire and Rescue Services (Emergencies) (Wales) Order 2007, SI 2007/3193. 'Emergency' means an event or situation that causes or is likely to cause one or more individuals to die, be seriously injured or become seriously ill, or serious harm to the environment, including the life and health of plants and animals: s 58. As to orders made under the 2004 Act see PARA 10.

For other functions of fire and rescue authorities see PARA 65A.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(1) POWERS AND DUTIES OF FIRE AUTHORITIES AND PERSONNEL/60. Fire prevention and protection.

## **60. Fire prevention and protection.**

Every fire authority<sup>1</sup> must secure efficient arrangements for obtaining, by inspection or otherwise, information required for fire-fighting purposes<sup>2</sup> with respect to the character of the buildings and other property in its area, the available water supplies and the means of access to them and other material local circumstances<sup>3</sup>.

It is submitted that, in view of these duties of inspection and advice<sup>4</sup> imposed upon fire authorities with respect to fire prevention, the definition of 'fire-fighting purposes' must not be construed so narrowly as to be limited to purposes arising on the occasion of a fire<sup>5</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 For the meaning of 'fire-fighting purposes' see PARA 59 ante.

3 Fire Services Act 1947 s 1(1)(d). In the case of an accident involving a leakage of gas from underground gas storage or other event notified to the public gas transporter under the Gas Act 1965 s 17(1)(b) (as amended), the public gas transporter must ensure that the fire authority is notified immediately and provided with plans, maps and other information reasonably required for the carrying out of its duties: see s 17(5) (as amended); and FUEL AND ENERGY vol 19(2) (2007 Reissue) PARAS 1023, 1029. In the event of an accidental escape or ignition of anything in a pipeline within the meaning of the Pipe-lines Act 1962 s 65 (other than a railway pipeline: see s 59(5) (as amended); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 562), the owner of the pipeline is under a similar duty: see s 37 (as amended); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 617.

4 See PARA 3 text and notes 1-3 ante.

5 See PARA 59 ante.

## **UPDATE**

### **59-62 The nature of fire-fighting purposes ... Fires at sea**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **60 Fire prevention and protection**

TEXT AND NOTES--1947 Act replaced by the Fire and Rescue Services Act 2004. In making provision for the purpose of extinguishing fires and protecting life and property in the event of fires in its area, a fire and rescue authority (see PARA 17) must in particular make arrangements for obtaining information needed for that purpose: s 7(2)(d).

NOTE 3--'Public gas transporter' now 'gas transporter': see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 805. Reference to fire authority is now to fire and rescue authority: 1965 Act s 17(5) (amended by the 2004 Act supra Sch 1 para 20).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(1) POWERS AND DUTIES OF FIRE AUTHORITIES AND PERSONNEL/61. Fire calls.

## **61. Fire calls.**

Every fire authority<sup>1</sup> must secure efficient arrangements for dealing with calls for the assistance of the fire brigade in case of fire<sup>2</sup> and for summoning members of the fire brigade<sup>3</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 As to liability for false alarms of fire see the Fire Services Act 1947 s 31(1) (as amended); and PARA 80 post.

3 Ibid s 1(1)(c). As to fire brigades see PARA 35 et seq ante.

### **UPDATE**

#### **59-62 The nature of fire-fighting purposes ... Fires at sea**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **61 Fire calls**

TEXT AND NOTES--1947 Act replaced by the Fire and Rescue Services Act 2004. In making provision for the purposes of extinguishing fires and protecting life and property in the event of fires in its area, a fire and rescue authority (see PARA 17) must make arrangements for dealing with calls for help and for summoning personnel: s 7(2)(c).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(1) POWERS AND DUTIES OF FIRE AUTHORITIES AND PERSONNEL/62. Fires at sea.

## **62. Fires at sea.**

The powers of a fire authority<sup>1</sup> include power to employ the fire brigade<sup>2</sup> maintained by it, or use any equipment so maintained, at sea (whether or not within the territorial sea of the United Kingdom)<sup>3</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante. As to the powers of fire authorities generally see PARA 18 et seq ante.

2 As to fire brigades see PARA 35 et seq post

3 Fire Services Act 1947 s 3(1)(dd) (added by the Merchant Shipping and Maritime Security Act 1997 s 4). For the meaning of 'United Kingdom' see PARA 20 note 3 ante.

### **UPDATE**

#### **59-62 The nature of fire-fighting purposes ... Fires at sea**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

#### **62 Fires at sea**

TEXT AND NOTES--1947 Act replaced by the Fire and Rescue Services Act 2004. If a fire and rescue authority (see PARA 17) has power to act, or is required to act, outside its area, it may exercise the power, or perform the duty, at sea or under the sea: s 20.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(1) POWERS AND DUTIES OF FIRE AUTHORITIES AND PERSONNEL/63. Damage to property.

### **63. Damage to property.**

In order to avoid danger to persons or damage to property resulting from a fire, firefighters, like other members of the public, may adopt such means of extinguishing the fire as may in the circumstances be necessary. Thus a house on fire may be pulled down to prevent the fire spreading to other property<sup>1</sup>, and a dangerous structure may be pulled down to prevent its collapse into the highway<sup>2</sup>. The justification of the action taken depends on the state of things at the moment of interference and not upon the inference as to necessity to be drawn after the event. It is a good defence to an action if, there being a real and imminent danger, the means taken to avert it were reasonably necessary in the sense that they were acts which a reasonable man would properly do to meet such a real danger<sup>3</sup>.

1 *Maleverer v Spinke* (1537) 1 Dyer 35b, 36b; Shelley argued in YB Trin 13 Hen 8, fo 15, pl 1 at fo 16a; Kingsmill J in YB Trin 21 Hen 7, fo 27b, pl 5; Littleton J in YB 9 Edw 4, fo 35, pl 10.

2 *Dewey v White* (1827) 1 Mood & M 56.

3 *Cope v Sharpe (No 2)* [1912] 1 KB 496, CA.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(1) POWERS AND DUTIES OF FIRE AUTHORITIES AND PERSONNEL/64. Mitigation of damage from fire.

#### **64. Mitigation of damage from fire.**

Every fire authority<sup>1</sup> must secure efficient arrangements for ensuring that reasonable steps are taken to prevent or mitigate damage to property resulting from measures taken in dealing with fires in its area<sup>2</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 Fire Services Act 1947 s 1(1)(e).

#### **UPDATE**

#### **64-68 Mitigation of damage from fire ... Speed limits**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

#### **64 Mitigation of damage from fire**

TEXT AND NOTES--1947 Act replaced by the Fire and Rescue Services Act 2004. In making provision for the purposes of extinguishing fires and protecting life and property in the event of fires in its area, a fire and rescue authority (see PARA 17) must make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken for those purposes: s 7(2)(e).



Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(1) POWERS AND DUTIES OF FIRE AUTHORITIES AND PERSONNEL/65. Control of fires.

## 65. Control of fires.

At any fire the senior fire brigade officer present<sup>1</sup> has the sole charge and control of all operations for the extinction of the fire, including the fixing of the positions of fire engines and apparatus, the attaching of hose to any water pipes or the use of any water supply and the selection of the parts of the premises, object or place where the fire is, or of adjoining premises, objects or places against which the water is to be directed<sup>2</sup>. He may also require water undertakers to provide a greater supply and pressure of water for extinguishing a fire<sup>3</sup>.

1 The 'senior fire brigade officer present', in relation to any fire, means the senior officer present of the fire brigade maintained in the area in which the fire originates, or, if any arrangements or reinforcement scheme (see PARA 29 ante) provide that any other person is to have charge of the operations for the extinction of the fire, that other person: Fire Services Act 1947 s 30(6).

2 Ibid s 30(3). As to fire brigades see PARA 35 et seq ante.

3 See ibid s 30(4); and PARA 74 post.

## UPDATE

### 64-68 Mitigation of damage from fire ... Speed limits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### 65-66 Control of fires, Closing of streets

Replaced.

An employee of a fire and rescue authority<sup>1</sup> who is authorised in writing by the authority may do anything he reasonably believes to be necessary (1) if he reasonably believes a fire to have broken out or to be about to break out, for the purpose of extinguishing or preventing the fire or protecting life or property<sup>2</sup>; (2) if he reasonably believes a road traffic accident to have occurred, for the purpose of rescuing people or protecting them from serious harm<sup>3</sup>; (3) if he reasonably believes an emergency<sup>4</sup> of another kind to have occurred, for the purpose of discharging any function conferred on the fire and rescue authority in relation to the emergency<sup>5</sup>; (4) for the purpose of preventing or limiting damage to property resulting from action taken as mentioned under head (1), (2) or (3) above<sup>6</sup>. In particular, such a duly authorised employee of a fire and rescue authority may (a) enter premises or a place, by force if necessary, without the consent of the owner or occupier of the premises or place<sup>7</sup>; (b) move or break into a vehicle without the consent of its owner<sup>8</sup>; (c) close a highway<sup>9</sup>; (d) stop and regulate traffic<sup>10</sup>; (e) restrict the access of persons to premises or a place<sup>11</sup>.

A person commits an offence if without reasonable excuse he obstructs or interferes with an employee of a fire and rescue authority taking action authorised under the provisions mentioned above<sup>12</sup>.

- 1 As to fire and rescue authorities see PARA 17 ante.
- 2 Fire and Rescue Services Act 2004 s 44(1)(a).
- 3 Ibid s 44(1)(b).
- 4 'Emergency' means an event or situation that causes or is likely to cause one or more individuals to die, be seriously injured or become seriously ill, or serious harm to the environment, including the life and health of plants and animals: ibid s 58.
- 5 Ibid s 44(1)(c).
- 6 Ibid s 44(1)(d).
- 7 Ibid s 44(2)(a).
- 8 Ibid s 44(2)(b).
- 9 Ibid s 44(2)(c).
- 10 Ibid s 44(2)(d).
- 11 Ibid s 44(2)(e).
- 12 Ibid s 44(3). A person guilty of an offence under s 44(3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 44(4). As to the standard scale see PARA 7 NOTE 1.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(1) POWERS AND DUTIES OF FIRE AUTHORITIES AND PERSONNEL/65A. Other functions.

### **65A. Other functions.**

The Secretary of State<sup>1</sup> may direct a fire and rescue authority to take, or not to take, action specified in the direction in relation to a specific fire or a specific emergency<sup>2</sup> of another kind, and such a direction may require a fire and rescue authority to act outside its area<sup>3</sup>.

A fire and rescue authority may take any action it considers appropriate in response to an event or situation that causes or is likely to cause one or more individuals to die, be injured or become ill<sup>4</sup>, or harm to the environment, including the life and health of plants and animals<sup>5</sup>, for the purpose of enabling action to be taken in response to such an event or situation<sup>6</sup>.

1 In relation to Wales, references to the Secretary of State are substituted with a reference to the National Assembly for Wales: Fire and Rescue Services Act 2004 s 62(1).

2 'Emergency' means an event or situation that causes or is likely to cause one or more individuals to die, be seriously injured or become seriously ill, or serious harm to the environment, including the life and health of plants and animals: Fire and Rescue Services Act 2004 s 58.

3 Ibid s 10. A direction under s 10 may be varied or revoked by a further such direction: s 10(3).

4 Ibid s 11(1)(a), (2).

5 Ibid s 11(1)(b). The power conferred by s 11(1) may be exercised by an authority outside as well as within the authority's area: s 11(4). A fire and rescue authority may enter into arrangements with another fire and rescue authority or any other person, for the discharge to any extent by that other authority or person of a function conferred on the first authority under s 1: see PARA 59.

6 Ibid s 12(1). A fire and rescue authority may provide services under s 12 outside as well as within the authority's area: s 12(2).

## **UPDATE**

### **64-68 Mitigation of damage from fire ... Speed limits**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **65-66 Control of fires, Closing of streets**

Replaced.

An employee of a fire and rescue authority<sup>1</sup> who is authorised in writing by the authority may do anything he reasonably believes to be necessary (1) if he reasonably believes a fire to have broken out or to be about to break out, for the purpose of extinguishing or preventing the fire or protecting life or property<sup>2</sup>; (2) if he reasonably believes a road traffic accident to have occurred, for the purpose of rescuing people or protecting them from serious harm<sup>3</sup>; (3) if he reasonably believes an emergency<sup>4</sup> of another kind to have occurred, for the purpose of discharging any function conferred on the fire and rescue authority in relation to the emergency<sup>3</sup>; (4) for the purpose of preventing or limiting damage to property resulting from action taken as mentioned under head (1), (2) or (3) above<sup>6</sup>. In particular, such a duly authorised employee of a

fire and rescue authority may (a) enter premises or a place, by force if necessary, without the consent of the owner or occupier of the premises or place<sup>7</sup>; (b) move or break into a vehicle without the consent of its owner<sup>8</sup>; (c) close a highway<sup>9</sup>; (d) stop and regulate traffic<sup>10</sup>; (e) restrict the access of persons to premises or a place<sup>11</sup>.

A person commits an offence if without reasonable excuse he obstructs or interferes with an employee of a fire and rescue authority taking action authorised under the provisions mentioned above<sup>12</sup>.

1 As to fire and rescue authorities see PARA 17.

2 Fire and Rescue Services Act 2004 s 44(1)(a).

3 Ibid s 44(1)(b).

4 'Emergency' means an event or situation that causes or is likely to cause one or more individuals to die, be seriously injured or become seriously ill, or serious harm to the environment, including the life and health of plants and animals: ibid s 58.

5 Ibid s 44(1)(c).

6 Ibid s 44(1)(d).

7 Ibid s 44(2)(a).

8 Ibid s 44(2)(b).

9 Ibid s 44(2)(c).

10 Ibid s 44(2)(d).

11 Ibid s 44(2)(e).

12 Ibid s 44(3). A person guilty of an offence under s 44(3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 44(4). As to the standard scale see PARA 7 NOTE 1.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(1) POWERS AND DUTIES OF FIRE AUTHORITIES AND PERSONNEL/66. Closing of streets.

## **66. Closing of streets.**

The senior officer of police<sup>1</sup> present at any fire or in the absence of any officer of police the senior fire brigade officer present<sup>2</sup> may close to traffic any street<sup>3</sup> or may stop or regulate the traffic in any street whenever in his opinion it is necessary or desirable to do so for fire-fighting purposes<sup>4</sup>.

1 For the ranks in a police force see the Police Act 1996 ss 13, 50; the Police Regulations 1995, SI 1995/215, reg 6 (as amended); and POLICE vol 36(1) (2007 Reissue) PARA 230. It is submitted that 'officer of police' is not intended to exclude the rank of constable or sergeant.

2 For the meaning of 'senior fire brigade officer present' see PARA 65 note 1 ante.

3 'Street' includes any highway, including a highway over any bridge and any road, lane, footway, square, court, alley or passage, whether a thoroughfare or not: Fire Services Act 1947 s 38(1).

4 Ibid s 30(5). For the meaning of 'fire-fighting purposes' see PARA 59 ante.

## **UPDATE**

### **64-68 Mitigation of damage from fire ... Speed limits**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **65-66 Control of fires, Closing of streets**

Replaced.

An employee of a fire and rescue authority<sup>1</sup> who is authorised in writing by the authority may do anything he reasonably believes to be necessary (1) if he reasonably believes a fire to have broken out or to be about to break out, for the purpose of extinguishing or preventing the fire or protecting life or property<sup>2</sup>; (2) if he reasonably believes a road traffic accident to have occurred, for the purpose of rescuing people or protecting them from serious harm<sup>3</sup>; (3) if he reasonably believes an emergency<sup>4</sup> of another kind to have occurred, for the purpose of discharging any function conferred on the fire and rescue authority in relation to the emergency<sup>5</sup>; (4) for the purpose of preventing or limiting damage to property resulting from action taken as mentioned under head (1), (2) or (3) above<sup>6</sup>. In particular, such a duly authorised employee of a fire and rescue authority may (a) enter premises or a place, by force if necessary, without the consent of the owner or occupier of the premises or place<sup>7</sup>; (b) move or break into a vehicle without the consent of its owner<sup>8</sup>; (c) close a highway<sup>9</sup>; (d) stop and regulate traffic<sup>10</sup>; (e) restrict the access of persons to premises or a place<sup>11</sup>.

A person commits an offence if without reasonable excuse he obstructs or interferes with an employee of a fire and rescue authority taking action authorised under the provisions mentioned above<sup>12</sup>.

1 As to fire and rescue authorities see PARA 17.

2 Fire and Rescue Services Act 2004 s 44(1)(a).

3 Ibid s 44(1)(b).

4 'Emergency' means an event or situation that causes or is likely to cause one or more individuals to die, be seriously injured or become seriously ill, or serious harm to the environment, including the life and health of plants and animals: ibid s 58.

5 Ibid s 44(1)(c).

6 Ibid s 44(1)(d).

7 Ibid s 44(2)(a).

8 Ibid s 44(2)(b).

9 Ibid s 44(2)(c).

10 Ibid s 44(2)(d).

11 Ibid s 44(2)(e).

12 Ibid s 44(3). A person guilty of an offence under s 44(3) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 44(4). As to the standard scale see PARA 7 NOTE 1.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(1) POWERS AND DUTIES OF FIRE AUTHORITIES AND PERSONNEL/67. Power to enter premises.

## **67. Power to enter premises.**

Any member of a fire brigade who is on duty, any member of any other fire brigade who is acting in pursuance of any arrangements<sup>1</sup> made under the Fire Services Act 1947, or any constable may enter and, if necessary, break into any premises or place<sup>2</sup> in which a fire has or is reasonably believed to have broken out or which it is necessary to enter for the purposes of extinguishing a fire or of protecting the premises or place; from acts done for fire-fighting purposes<sup>3</sup>, without the consent of the owner or occupier of the premises or place, and may do all such things as he deems necessary for extinguishing the fire or for protecting from fire, or from acts done for fire-fighting purposes, any such premises or place or for rescuing any person or property therein<sup>4</sup>. For the purposes of arrangements for obtaining information required for fire-fighting purposes<sup>5</sup>, any member of a fire brigade, if authorised in writing by his fire authority<sup>6</sup>, has the same powers of entering premises as are conferred by the Public Health Act 1936<sup>7</sup> upon authorised officers of councils<sup>8</sup>. In the case of certain premises a duly authorised fireman also has a power of entry for fire prevention purposes<sup>9</sup>.

A member of a private fire brigade who is not acting in pursuance of such arrangements made under the Fire Services Act 1947 has no greater right to enter premises to extinguish a fire than any other member of the public<sup>10</sup>. If a person makes a bonfire upon his premises, so as to be dangerous to the neighbourhood, it amounts to a nuisance and it is lawful for his neighbours to enter upon the premises and abate it. For this purpose they may use such amount of violence as may be necessary to overcome any resistance which may be offered to the endeavour to put it out<sup>11</sup>.

1 As to the arrangements see PARA 28 ante.

2 It is submitted that these words are not necessarily confined to land and would include ships: see *Andrews v Andrews and Mears* [1908] 2 KB 567 at 571, CA, per Kennedy LJ. There may be local Acts empowering harbour authorities to move ships in harbour which would need to be taken into consideration: see PORTS AND HARBOURS.

3 For the meaning of 'fire-fighting purposes' see PARA 59 ante.

4 Fire Services Act 1947 s 30(1). As to the application of the Act to Crown property such as aerodromes belonging to the Royal Air Force see *Bombay Province v Bombay Municipal Corp'n* [1947] AC 58, PC; and STATUTES vol 44(1) (Reissue) PARA 1321. It is submitted that the Fire Services Act 1947 s 30(1) would not override diplomatic immunity. Consular offices may be entered in case of fire: see the Consular Relations Act 1968 s 1(1), Sch 1, art 31 (as amended); and INTERNATIONAL RELATIONS LAW.

5 ie arrangements secured in pursuance of the Fire Services Act 1947 s 1(1)(d): see PARA 60 ante.

6 For the meaning of 'fire authority' see PARA 17 ante.

7 ie under the Public Health Act 1936 s 287 (as amended), which provides that any authorised officer of a council has a right for the purposes of that Act to enter any premises at all reasonable hours on producing, if required, a duly authenticated document showing his authority, and after giving (except in relation to factories or workplaces) 24 hours' notice of the intended entry to the occupier: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 114.

8 Fire Services Act 1947 s 1(2). The Public Health Act 1936 accordingly has effect as if references in s 287 (as amended) (see note 7 supra) to an 'authorised officer of a council' included references to an authorised member of a fire brigade and as if among the purposes specified in s 287(1) (as amended) there were included the purposes specified in the Fire Services Act 1947 s 1(1)(d) (see PARA 60 ante): s 1(2).

9 See the Fire Precautions Act 1971 s 19 (as amended), ss 20, 40(3), (4); and PARAS 140, 141 post. As to premises licensed under the Gaming Act 1968 see s 43(9). As to clubs registered under the Licensing Act 1964

see s 45 (as amended), s 46 (prospectively amended by the Access to Justice Act 1999 s 90, Sch 13 paras 37, 48). As to premises for which a fire certificate is required see PARA 83 et seq post; and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 660.

10 *Carter v Thomas* [1893] 1 QB 673, DC. A member of the public may have the right to enter premises if it were necessary in order to save life or also perhaps if there were insufficient firemen on the premises for the purpose of extinguishing the fire or if the duty of the persons employed in extinguishing the fire was being neglected and danger to life or property was resulting: see *Carter v Thomas* supra at 679; *Cope v Sharpe* [1910] 1 KB 168 at 172, DC.

11 *R v Green* (1847) 11 JP 246. See also *Job Edwards Ltd v Birmingham Navigations* [1924] 1 KB 341, CA; and NUISANCE vol 78 (2010) PARA 181.

## UPDATE

### 64-68 Mitigation of damage from fire ... Speed limits

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### 67 Power to enter premises

TEXT AND NOTES--Replaced<sup>1</sup>.

An authorised officer<sup>2</sup> may at any reasonable time enter premises (1) for the purpose of obtaining information needed for the discharge of a fire and rescue authority's functions relating to fire-fighting, road traffic accidents or emergencies<sup>3</sup>, or (2) if there has been a fire in the premises, for the purpose of investigating what caused the fire or why it progressed as it did<sup>4</sup>. An authorised officer may not<sup>5</sup> enter premises by force<sup>6</sup>, nor may he demand admission as of right to premises occupied as a private dwelling unless 24 hours' notice in writing has first been given to the occupier of the dwelling<sup>7</sup>. An authorised officer may apply to a justice of the peace if he considers it necessary to enter premises<sup>8</sup>, but he is unable to do so, or considers that he is likely to be unable to do so, otherwise than by force<sup>9</sup>. An authorised officer may also apply to a justice of the peace if he considers it necessary to enter a dwelling<sup>10</sup> without giving the required 24 hours' notice in writing<sup>11</sup>. An authorised officer exercising a power of entry<sup>12</sup> must, if so required, produce evidence of his authorisation and any warrant before entering the premises, or at any time before leaving the premises<sup>13</sup>.

If an authorised officer exercises a power of entry under head (1) he may take with him any other persons and any equipment that he considers necessary, and require any person present on the premises to provide him with any facilities, information, documents or records, or other assistance that he may reasonably request<sup>14</sup>.

If an authorised officer exercises a power of entry under head (2) he may (a) take with him any other persons and any equipment that he considers necessary<sup>15</sup>; (b) inspect and copy any documents or records on the premises or remove them from the premises<sup>16</sup>; (c) carry out any inspections, measurements and tests in relation to the premises, or to an article or substance found on the premises, that he considers necessary<sup>17</sup>; (d) take samples of an article or substance found on the premises, but not so as to destroy it or damage it unless it is necessary to do so for the purpose of the investigation<sup>18</sup>; (e) dismantle an article found on the premises, but not so as to destroy it or damage it unless it is necessary to do so for the purpose of the investigation<sup>19</sup>; (f) take possession of an article or substance found on the premises and detain it for as long as is necessary specified purposes<sup>20</sup>; (g) require a person present on the premises to provide him with any facilities, information, documents or records, or other assistance, that he may reasonably request<sup>21</sup>.



If in the exercise of his powers<sup>22</sup> an authorised officer enters premises which are unoccupied, or from which the occupier is temporarily absent, he must on his departure leave the premises as effectively secured against unauthorised entry as he found them<sup>23</sup>. A person commits an offence if without reasonable excuse he obstructs the exercise of any power<sup>24</sup> or fails to comply with certain requirements<sup>25</sup>.

The notice required to demand admission to a dwelling<sup>26</sup> may be given by delivering it to the occupier of the dwelling, by leaving it for him at the dwelling, or by sending it by post to him at the dwelling<sup>27</sup>. The notice required to enter unoccupied premises<sup>28</sup> may be given by delivering it to the person who was the occupier of the dwelling immediately before the fire concerned, by leaving it for him at his proper address<sup>29</sup> or by sending it by post to him at that address<sup>30</sup>. If the name or address of the person to whom either such notice is required to be given cannot be ascertained after reasonable inquiry<sup>31</sup>, the notice may be given by leaving it in the hands of a person who is or appears to be resident in the dwelling or by leaving it affixed to a conspicuous part of the dwelling<sup>32</sup>. If either such notice is transmitted to the person to whom it is required to be given by means of an electronic communications network<sup>33</sup> or by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible<sup>34</sup>, the transmission has effect as a delivery of the notice to the recipient only if he has indicated to the fire and rescue authority on whose behalf the transmission is made his willingness to receive such a notice transmitted in the form and manner used<sup>35</sup>. If the making of the transmission has been recorded in the computer system of the fire and rescue authority on whose behalf it is made, it must be presumed, unless the contrary is proved, that the transmission was made to the person recorded in that system as receiving it, was made at the time recorded in that system as the time of delivery, and contained the information recorded on that system in respect of it<sup>36</sup>.

1 1947 Act replaced by the Fire and Rescue Services Act 2004.

2 Ie an employee of a fire and rescue authority who is authorised in writing by the authority for the purposes of *ibid* s 45: s 45(2).

3 Ie those functions the authority has under *ibid* s 7, 8 or 9 (see PARA 59): s 45(1)(a).

4 *Ibid* s 45(1)(b). An authorised officer may not under s 45(1)(b) enter as of right premises in which there has been a fire if the premises are unoccupied and the premises were occupied as a private dwelling immediately before the fire, unless 24 hours' notice in writing has first been given to the person who was the occupier of the dwelling immediately before the fire: s 45(4).

5 Ie under *ibid* s 45(1).

6 *Ibid* s 45(3)(a).

7 *Ibid* s 45(3)(b).

8 Ie necessary of the purposes of *ibid* s 45(1).

9 *Ibid* s 45(5). If on an application under s 45(5) a justice is satisfied that it is necessary for the officer to enter the premises for the purposes of s 45(1), and he is unable to do so, or is likely to be unable to do so, otherwise than by force, he may issue a warrant authorising the officer to enter the premises by force at any reasonable time: s 45(6).

10 Ie necessary of the purposes of *ibid* s 45(1).

11 Ie the notice required by *ibid* s 45(3)(b) and (4): s 45(7). If on an application under s 45(7) a justice is satisfied that it is necessary for the authorised officer to enter the dwelling for the purposes of s 45(1) without giving notice as required by s 45(3)(b) or (4), he may issue a warrant authorising the officer to enter the premises at any time, by force if necessary: s 45(8).

12 Ie under *ibid* s 45.

13 Ibid s 45(9).

14 Ibid s 46(1).

15 Ibid s 46(2)(a).

16 Ibid s 46(2)(b).

17 Ibid s 46(2)(c).

18 Ibid s 46(2)(d). If an authorised officer exercises the power in s 46(2)(d) he must leave a notice at the premises, either with a responsible person or if that is impracticable fixed in a prominent position, giving particulars of the article or substance and stating that he has taken a sample of it and, if it is practicable to do so, give to a responsible person at the premises a portion of the sample marked in a manner sufficient to identify it: s 46(3).

19 Ibid s 46(2)(e).

20 Those purposes are: (1) to examine it and do anything he has power to do under head (c) or (e); (2) to ensure that it is not tampered with before his examination of it is completed; (3) to ensure that it is available for use as evidence in proceedings for an offence relevant to the investigation: *ibid* s 45(f). If an authorised officer exercises the power in s 46(2)(f) he must leave a notice at the premises, either with a responsible person or if that is impracticable fixed in a prominent position, giving particulars of the article or substance and stating that he has taken possession of it: s 46(4).

21 Ibid s 46(2)(g).

22 *Ie* any power under *ibid* s 45 or s 46.

23 Ibid s 46(5).

24 *Ie* any power under *ibid* s 45 or 46.

25 *Ie* any requirement to provide him with any facilities, information, documents or records, or other assistance that he may reasonably request under *ibid* s 46(1)(b) or s 45(2)(g): s 46(6). A person guilty of an offence under s 46(6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 46(7). As to the standard scale see *PARA 7*.

26 *Ie* the notice required by *ibid* s 45(3)(b).

27 Ibid s 47(1).

28 *Ie* the notice required by *ibid* s 45(4).

29 The proper address of a person for the purposes of *ibid* s 47(2) and the Interpretation Act 1978 s 7 is, if he has specified an address in the United Kingdom as his address for the purposes of the notice required by the 2004 Act s 45(4), that address and, in any other case, his last known address: s 47(3).

30 Ibid s 47(2).

31 The provisions of the Local Government Act 1972 s 250(2)-(5) (as amended) (conduct of local inquiries: see *LOCAL GOVERNMENT* vol 69 (2009) *PARA 105*) apply in relation to such an inquiry: 2004 Act s 56.

32 Ibid s 47(4).

33 *Ie* within the meaning given by the Communications Act 2003 s 32.

34 2004 Act s 48(1).

35 Ibid s 48(2). An indication to a fire and rescue authority for the purposes of s 48(2) (1) must be given to the authority in any manner it requires; (2) may be a general indication or one that is limited to notices of a particular description; (3) must state the address to be used and must be accompanied by any other information which the authority requires for the making of the transmission; (4) may be modified or withdrawn at any time by a notice given to the authority in any manner it requires: s 48(3).

36 Ibid s 48(4).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(2) FIRE BRIGADE VEHICLES/68. Speed limits.

## **(2) FIRE BRIGADE VEHICLES**

### **68. Speed limits.**

No statutory provision imposing a speed limit on motor vehicles applies to any vehicle on an occasion when it is being used for fire brigade, ambulance or police purposes, if the observance of those provisions would be likely to hinder the use of the vehicle for the purpose for which it is being used on that occasion<sup>1</sup>.

<sup>1</sup> Road Traffic Regulation Act 1984 s 87. See ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 854. This provision does not relieve the driver from civil liability for an accident caused by driving at an unsafe speed even though the speed was required for the proper execution of this duty: see *Wardell Yerburch v Surrey County Council* [1973] RTR 462.

### **UPDATE**

#### **64-68 Mitigation of damage from fire ... Speed limits**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **68 Speed limits**

TEXT AND NOTE 1--1984 Act s 87 now s 87(1): Serious Organised Crime and Police Act 2005 Sch 4 para 42. Reference to fire brigade is now to fire and rescue authority (see PARA 17): 1984 Act s 87(1) (amended by the Fire and Rescue Services Act 2004 Sch 1 para 55).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(2) FIRE BRIGADE VEHICLES/69. Defences for certain driving offences.

## **69. Defences for certain driving offences.**

No person may be convicted of driving a motor vehicle elsewhere than on a road if he proves to the satisfaction of the court that the vehicle was so driven to save life, extinguish fire or meet any similar emergency<sup>1</sup>.

The provisions restricting and defining the time for which drivers of public service vehicles or certain other motor vehicles may drive consecutively do not apply to vehicles used for fire brigade or ambulance purposes<sup>2</sup>.

1 Road Traffic Act 1988 s 34(3). See ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 1007.

2 See the Transport Act 1968 s 95 (as amended), s 102(4); and ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1380.

### **UPDATE**

## **69 Defences for certain driving offences**

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 1--1988 Act s 34(3) now s 34(4) (substituted by the Countryside and Rights of Way Act 2000 Sch 7 para 5).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(2) FIRE BRIGADE VEHICLES/70. Licences.

## **70. Licences.**

Vehicles used for fire brigade purposes do not require an operator's licence for the conveyance of goods<sup>1</sup>.

Notwithstanding that no excise duty is chargeable in respect of a fire engine or ambulance or in respect of a vehicle kept by a fire authority while it is used for the purposes of the authority's fire brigade service<sup>2</sup>, the owner must apply for a licence and registration book<sup>3</sup>.

<sup>1</sup> See the Goods Vehicles (Licensing of Operators) Regulations 1995, SI 1995/2869, reg 33, Sch 3 Pt I para 6; and ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1329

<sup>2</sup> See the Vehicle Excise and Registration Act 1994 ss 1, 5, Sch 2 paras 4, 5; and CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 746.

<sup>3</sup> See the Road Vehicles (Registration and Licensing) Regulations 1971, SI 1971/450, reg 26 (as amended); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 549.

### **UPDATE**

## **70 Licences**

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTE 2--Reference to fire authority is now to fire and rescue authority and reference to fire brigade service is now to functions: 1994 Act Sch 2 para 5 (amended by the Fire and Rescue Services Act 2004 Sch 1 para 85). SI 1995/2869 Sch 3 Pt 1 para 6 amended: SI 2004/3168 (England), SI 2005/2929 (Wales), SI 2006/594.

NOTE 3--SI 1971/450 replaced: Road Vehicles (Registration and Licensing) Regulations 2002, SI 2002/2742 (as amended).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(2) FIRE BRIGADE VEHICLES/71. Equipment and fittings.

## 71. Equipment and fittings.

A motor vehicle used for fire brigade, ambulance or police purposes or owned by a body formed primarily for the purposes of fire salvage and used for those or similar purposes, and a motor vehicle owned by the Forestry Commission<sup>1</sup> or by a local authority and used from time to time for fighting fires is among the vehicles which may be fitted with a bell, gong, siren or similar device or two-tone horn<sup>2</sup>. No vehicle, other than an emergency vehicle, is to be fitted with a blue warning beacon or special warning lamp, or a device which resembles a blue warning beacon or a special warning lamp, whether the same is in working order or not<sup>3</sup>.

On an occasion that a vehicle is being used for any of these purposes it is exempt from the prohibition on the sounding of horns and other warning instruments on restricted roads between 11.30 pm and 7.00 am if it is necessary or desirable to do so either to indicate to other road users the urgency of the vehicle's purposes or to warn them of its presence on the road<sup>4</sup>.

In the case of a vehicle being used for fire brigade, ambulance or police purposes or for defence purposes (including civil defence purposes), or in connection with the removal of any obstruction to traffic, if compliance with any provision relating to restrictions on use of vehicles carrying wide or long loads or having fixed appliances or apparatus<sup>5</sup> would hinder or be likely to hinder the use of the vehicle for the purpose for which it is being used, that provision does not apply to that vehicle while it is being so used<sup>6</sup>.

1 As to the Forestry Commission see FORESTRY vol 52 (2009) PARA 34 et seq.

2 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 37(4), (5)(a), (b), (c); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 312. 'Horn' means an instrument, not being a bell, gong or siren, capable of giving audible and sufficient warning of the approach or position of the vehicle to which it is fitted: reg 37(10)(a). References to a bell, gong or siren include references to any instrument or apparatus capable of emitting a sound similar to that emitted by a bell, gong or siren: reg 37(10)(b). 'Two-tone horn' means an instrument which, when operated, automatically produces a sound which alternates at regular intervals between two fixed notes: reg 37(10)(d).

3 See the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 16; and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 383.

4 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 99(1), (5)(a); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 612.

5 *Idem* regs 81, 82 (as amended): see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 589-595.

6 See *ibid* reg 82(10); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 595. As to provisions relating to projecting trailers and vehicles carrying overhanging or projecting loads or equipment see the Road Vehicles Lighting Regulations 1989, SI 1989/1796, reg 21 (as amended); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 389.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(2) FIRE BRIGADE VEHICLES/72. Extent of exemptions.

## **72. Extent of exemptions.**

In general, fire engines and other such vehicles and their drivers are subject to the ordinary law<sup>1</sup>. However, vehicles being used for fire brigade purposes are exempt from complying with certain road signs and markings.

Whereas a red signal conveys the prohibition that vehicular traffic other than tramcars must not proceed beyond the stop line<sup>2</sup>, when a vehicle is being used for fire brigade, ambulance or police purposes and the observance of the prohibition conveyed by the red signal would be likely to hinder the use of that vehicle for the purpose for which it is being used, then the prohibition does not apply to the vehicle, and the red signal conveys the prohibition that that vehicle must not proceed beyond the stop line in a manner or at a time likely to endanger any person or to cause the driver of any vehicle proceeding in accordance with the indications of light signals operating in association with the signals displaying the red signal to change its speed or course in order to avoid an accident<sup>3</sup>.

Whereas all vehicular traffic must comply with the requirement conveyed by keep left or keep right signs<sup>4</sup>, on an occasion where a vehicle is being used for fire brigade, ambulance or police purposes and the observance of such a requirement would be likely to hinder the use of that vehicle for one of those purposes then, instead of that requirement, the requirement conveyed by the sign in question is that the vehicle must not proceed beyond that sign in such a manner or at such a time as to be likely to endanger any person<sup>5</sup>.

The road marking<sup>6</sup> which requires that no vehicle is to stop on any length of road along which such a marking has been placed at any point between the ends of the marking<sup>7</sup> does not apply to a vehicle for the time being used for fire brigade, ambulance or police purposes<sup>8</sup>.

The prohibition on parking between sunset and sunrise, otherwise than with the near side of the vehicle close to the edge of the road<sup>9</sup> does not apply in respect of any motor vehicle being used for fire brigade, ambulance or police purposes (including civil defence purposes) if compliance with this prohibition would hinder or be likely to hinder the use of the vehicle for the purpose for which it is being used on that occasion<sup>10</sup>.

1 As to the circumstances in which fire engines and their drivers are not subject to the ordinary law see PARAS 68-71 ante.

2 See the Traffic Signs Regulations and General Directions 1994, SI 1994/1519, reg 33(1); and ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 971.

3 Ibid reg 33(1)(b).

4 Ie the sign shown in ibid diagram 610: reg 15(1).

5 Ibid reg 15(2).

6 Ie the marking shown in ibid diagram 1013.1 or 1013.2: reg 26(1).

7 See ibid reg 26(2)(a).

8 Ibid reg 26(3)(c).

9 See the Road Vehicles (Construction and Use) Regulations 1986, SI 1986/1078, reg 101(1) (as amended); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 615.

10 See ibid reg 101(2)(a); and ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 615.



## **UPDATE**

### **72 Extent of exemptions**

NOTE 2--SI 1994/1519 replaced: Traffic Signs Regulations and General Directions 2002, SI 2002/3113 (amended by SI 2003/393, SI 2003/2155, SI 2004/1275, SI 2005/1670, SI 2006/594, SI 2006/2083, SI 2008/2177, SI 2004/3168 (England), SI 2005/2929 (Wales)).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(3) WATER SUPPLY/73. Fire authority's duty to ensure supply of water.

### **(3) WATER SUPPLY**

#### **73. Fire authority's duty to ensure supply of water.**

A fire authority<sup>1</sup> must take all reasonable measures<sup>2</sup> for ensuring the provision of an adequate supply of water, and for securing that it will be available for use, in case of fire<sup>3</sup>. For this purpose a fire authority may enter into an agreement with statutory water undertakers<sup>4</sup> for the taking by the undertakers, on such terms as to payment or otherwise as may be specified in the agreement, of such measures as may be so specified for securing that an adequate supply of water will be available in case of fire<sup>5</sup>. No water undertakers may unreasonably refuse to enter into any agreement so proposed by a fire authority<sup>6</sup>. Certain obligations of water undertakers<sup>7</sup> are enforceable<sup>8</sup> by the Secretary of State<sup>9</sup>.

Furthermore, if satisfied that the existing supply of water provided by water undertakers for domestic and industrial purposes would be likely to be inadequate in case of fire, a fire authority may enter into an agreement with the undertakers for the provision of such additional supply of water as may be specified in the agreement<sup>10</sup>.

A fire authority also has power by agreement to secure the use, in case of fire, of water which is under the control of any person other than water undertakers<sup>11</sup>, to improve the access to any such water<sup>12</sup>, and to lay and maintain pipes and carry out other works in connection with the use of such water in case of fire<sup>13</sup>. Subject to any such agreement<sup>14</sup>, a fire authority may use for fire-fighting purposes<sup>15</sup> any convenient and suitable supply of water, but will be liable to pay reasonable compensation for it<sup>16</sup>.

It was once the duty of a fire authority to carry out certain functions for the purpose of civil defence, but this duty has now been transferred to local authorities<sup>17</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 In determining what measures are reasonable for ensuring an adequate supply of water in a locality it would seem appropriate to have regard to the normal fire-fighting requirements of the locality and the extent to which an occupier who creates an abnormal fire risk on his premises may reasonably be expected or required to take special precautions: see eg the Greater London Council (General Powers) Act 1968 s 16 (as amended), under which the fire authority's consent is required for the storage of certain flammable materials and such consent may contain requirements for facilitating the extinguishing of fires.

3 Fire Services Act 1947 s 13. However, s 13 does not confer a right of private action on a member of the public injured by the fire brigade's breach: see *Capital and Counties plc v Hampshire County Council*; *Digital Equipment Co Ltd v Hampshire County Council*; *John Munroe (Acrylics) Ltd v London Fire and Civil Defence Authority*; *Church of Jesus Christ of Latter Day Saints (GB) v West Yorkshire Fire and Civil Defence Authority* [1997] QB 1004, [1997] 2 All ER 865, CA.

4 In the Fire Services Act 1947, references to 'statutory water undertakers' are to have effect as references to a 'water undertaker': Water Act 1989 s 190(1), Sch 25 para 9(1). 'Water undertakers' is to be construed in accordance with, the Water Industry Act 1991 s 6: Interpretation Act 1978 s 5 Sch 1 (definition added by the Water Act 1989 Sch 25 para 55(1), (3); and amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 32). See WATER AND WATERWAYS vol 100 (2009) PARAS 134 et seq, 318 et seq.

5 Fire Services Act 1947 s 14(1).

6 Ibid s 14(1) (amended by the Water Act 1989 s 190(3), Sch 27 Pt I).

7 Ie under the Fire Services Act 1947 s 14(1)-(3) (as amended).

8 le under the Water Industry Act 1991 s 18: see PARA 76 post; and WATER AND WATERWAYS vol 100 (2009) PARA 163 et seq.

9 Fire Services Act 1947 s 14(4) (substituted by the Water Act 1989 Sch 25 para 9(2)(b); and amended by the Water Consolidation (Consequential Provisions) Act 1991 Sch 1 para 4(1)). As to the Secretary of State see PARA 10 ante.

10 Fire Services Act 1947 s 14(2).

11 Ibid s 15(1)(a).

12 Ibid s 15(1)(b).

13 Ibid s 15(1)(c).

14 le any agreement under ibid s 15(1).

15 For the meaning of 'fire-fighting purposes' see PARA 59 ante.

16 Fire Services Act 1947 s 15(2) (amended by the Water Act 1989 Sch 25 para 9(3), Sch 27 Pt I; and the Water Consolidation (Consequential Provisions) Act 1991 Sch 1 para 4(2)). This is without prejudice to the Water Industry Act 1991 ss 57(1), 147(1) (see WATER AND WATERWAYS vol 100 (2009) PARAS 348, 420); Fire Services Act 1947 s 15(2) (as so amended).

17 See the Civil Defence (General Local Authority Functions) Regulations 1993, SI 1993/1812 (as amended); and WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) PARAS 655-657.

## UPDATE

### **73-80 Fire authority's duty to ensure supply of water ... False alarms of fire**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **73 Fire [and rescue] authority's duty to ensure supply of water**

TEXT AND NOTES--1947 Act replaced by the Fire and Rescue Services Act 2004.

A fire and rescue authority (see PARA 17) must take all reasonable measures for securing that an adequate supply of water will be available for its use in the event of fire: s 38(1). It may use any suitable supply of water for the purposes of extinguishing a fire or protecting life or property in the event of a fire, but must pay reasonable compensation for the water: s 38(2). However, s 38(2) is subject to an agreement under s 39 or 41, and the Water Industry Act 1991 s 147: s 38(3).

A fire and rescue authority may enter into an agreement with a water undertaker for the purposes of the 2004 Act s 38(1), which may include terms as to payment to be made to the undertaker, subject to the 1991 Act s 147, and a water undertaker must enter into any such agreement which has been reasonably proposed: 2004 Act s 39(1)-(3). An obligation of a water undertaker under an agreement under s 39(1) or (3) is enforceable by the Secretary of State or, in relation to Wales, the National Assembly for Wales under the 1991 Act s 18: 2004 Act s 39(4). Further, a fire and rescue authority may enter into an agreement for the purposes of s 38(1) to secure the use of water under the control of a person other than a water undertaker, to improve access to any such water, to lay and maintain pipes and to carry out other works in connection with the use of such water: s 41.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(3) WATER SUPPLY/74. Water undertakers' duty to provide greater supply of water.

#### **74. Water undertakers' duty to provide greater supply of water.**

Any water undertakers<sup>1</sup>, on being required by the senior fire brigade officer present<sup>2</sup> at a fire to provide a greater supply and pressure of water for extinguishing a fire, must take all necessary steps to enable them to comply with the requirement and may for that purpose shut off the water from the mains and pipes in any area<sup>3</sup>. No authority or person is liable to any penalty or claim by reason of the interruption of the supply of water occasioned only by compliance of the water undertakers with this requirement<sup>4</sup>. Any water undertaker which, without reasonable excuse, fails to take any step which it is obliged to take is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale<sup>5</sup>.

1 For the meaning of 'water undertaker' see PARA 73 note 4 ante.

2 For the meaning of 'senior fire brigade officer present' see PARA 65 note 1 ante.

3 Fire Services Act 1947 s 30(4).

4 Ibid s 30(4).

5 Ibid s 30(4A) (added by the Water Act 1989 s 190(1), Sch 25 para 9). As to the standard scale see PARA 7 note 1 ante.

#### **UPDATE**

#### **73-80 Fire authority's duty to ensure supply of water ... False alarms of fire**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

#### **74 Water undertakers' duty to provide greater supply of water**

TEXT AND NOTES--1947 Act replaced by the Fire and Rescue Services Act 2004. If a fire and rescue authority requests a water undertaker to provide a supply and pressure of water for the purposes of extinguishing a fire that is greater than the undertaker would otherwise provide, the undertaker must take all necessary steps in order to do so (s 40(1)), and for the purposes of complying with that obligation the undertaker may shut off the water from the mains and pipes in any area (s 40(2)). No authority or person is liable to any penalty or claim arising because of anything done by a water undertaker in complying with its obligation s 40(1): s 40(3). A water undertaker commits an offence if, without reasonable excuse, it fails to take any step which it is obliged to take under s 40(1), and is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 40(4), (5).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(3) WATER SUPPLY/75. Provision of fire-hydrants.

## **75. Provision of fire-hydrants.**

It is the duty of a water undertaker<sup>1</sup> to allow any person to take water for extinguishing fires from any of its water mains or other pipes<sup>2</sup> on which a fire-hydrant is fixed<sup>3</sup>. At the request of the fire authority<sup>4</sup> concerned, every water undertaker must fix fire-hydrants on its water mains (other than trunk mains<sup>5</sup>) at such places as are most convenient for affording a supply of water for extinguishing any fire which may break out within the area of the undertaker<sup>6</sup>. It is also the duty of every water undertaker: (1) to keep every fire-hydrant fixed on any of its water mains or other pipes in good working order and, for that purpose to replace any such hydrant when necessary<sup>7</sup>; and (2) to ensure that a fire authority has been supplied by the undertaker with all such keys as the fire authority may require for the fire-hydrants fixed on the undertaker's mains or other pipes<sup>8</sup>. The expenses incurred by a water undertaker in complying with these obligations<sup>9</sup> are to be borne by the fire authority concerned<sup>10</sup>.

Water undertakers must, at the expense of the fire authority, cause the situation of every fire-hydrant, for the time being provided by the water undertaker by being fixed on any pipe of the undertaker, to be plainly indicated by a notice or distinguishing mark which may be placed on any wall or fence adjoining a street<sup>11</sup> or public place<sup>12</sup>.

Where any fire-hydrant, for the time being provided by a water undertaker by being fixed on any pipe of the undertaker, is damaged as the result of any use made of it with the authority of the undertakers, not being a use for fire-fighting purposes<sup>13</sup> or for any other purposes of the fire brigade, the fire authority is not liable for the cost of repairing or replacing the hydrant incurred as a result of the damage<sup>14</sup>.

Water undertakers must also, at the request and expense of the owner or occupier of any factory<sup>15</sup> or place of business, fix a fire-hydrant, to be used for extinguishing fires and not other purposes, at such place on any suitable water main or other pipe<sup>16</sup> of the undertaker as is as near as conveniently possible to that factory or place of business<sup>17</sup>. Any expenses incurred by a water undertaker in fixing such a specially requested fire-hydrant or in complying, in relation to such a hydrant, with its obligations to keep it in working order, to replace it when necessary, and to supply keys<sup>18</sup> are to be borne by the owner or occupier of the factory or place of business in question, according to whether the person who made the original request for the hydrant did so in his capacity as owner or occupier<sup>19</sup>, and are not to be borne by the fire authority<sup>20</sup>.

The above obligations of a water undertaker<sup>21</sup> are enforceable<sup>22</sup> by the Secretary of State<sup>23</sup>.

In addition, where a water undertaker is in breach of its obligations to provide water for fire-fighting<sup>24</sup>, it is guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum, or on conviction on indictment to a fine<sup>25</sup>. It is, however, a defence, in any proceedings against any water undertaker for such an offence, for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence<sup>26</sup>. However, a water undertaker is not required to do anything which it is unable to do by reason of the carrying out of any necessary works<sup>27</sup>.

1 For the meaning of 'water undertaker' see PARA 73 note 4 ante.

2 For the purposes of the Water Industry Act 1991, 'water main' means any pipe, not being a pipe for the time being vested in a person other than the undertaker, which is used or to be used by a water undertaker for the purpose of making a general supply of water available to customers or potential customers of the undertaker, as distinct from for the purpose of providing a supply to particular customers: s 219(1). References

to a pipe, including references to a main, a drain or a sewer, include references to a tunnel or conduit which serves or is to serve as the pipe in question and to any accessories for the pipe: s 219(2)(a). See WATER AND WATERWAYS vol 100 (2009) PARA 138; WATER AND WATERWAYS vol 100 (2009) PARA 350.

3 Ibid s 57(1). Although not expressly referred to as 'accessories' in the definition of that term in 219(1), it is submitted that fire-hydrants must be accessories to a pipe since, if they were not, a water undertaker would have no statutory power to install hydrants. As accessories, fire-hydrants are a 'relevant pipe' and as such are vested in the water undertaker under s 179, although the cost of maintenance falls as indicated in s 57 and in the Fire Services Act 1947 s 14 (as amended) (see PARA 73 ante; and WATER AND WATERWAYS vol 101 (2009) PARA 464; WATER AND WATERWAYS vol 101 (2009) PARA 348.

4 For the meaning of 'fire authority' see PARA 17 ante.

5 For the purposes of the Water Industry Act 1991, 'trunk main' means a water main which is, or is to be, used by a water undertaker for the purpose of conveying water from a source of supply to a filter or reservoir or from one filter or reservoir to another filter or reservoir, or for the purpose of conveying water in bulk, whether in the course of taking a supply of water in bulk or otherwise, between different places outside the area of the undertaker, from such a place to any part of that area or from one part of that area to another part of that area: s 219(1). See WATER AND WATERWAYS vol 100 (2009) PARA 348.

6 Ibid s 57(2).

7 Ibid s 57(3).

8 Ibid s 57(4).

9 Ie the obligations under ibid s 57(2)-(4): see the text to notes 7-9 supra. See also WATER AND WATERWAYS vol 100 (2009) PARA 348.

10 Ibid s 57(5).

11 For the meaning of 'street' see PARA 66 note 3 ante.

12 Fire Services Act 1947 s 14(3)(a) (s 14(3) amended by the Water Act 1989 s 190(1), Sch 25 para 9). 'Public place' is not defined in the Fire Services Act 1947, but as to its meaning see *Airton v Scott* (1909) 73 JP 148, DC; *R v Collinson* (1931) 75 Sol Jo 491, CCA.

13 For the meaning of 'fire-fighting purposes' see PARA 59 ante.

14 Fire Services Act 1947 s 14(3)(b) (as amended: see note 13 supra).

15 For these purposes, 'factory' has the same meaning as in the Factories Act 1961 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 318): Water Industry Act 1991 s 58(6).

16 A water main or other pipe is suitable for these purposes, in relation to a factory or place of business, if it is situated in a street which is in or near to that factory or place of business, it is of sufficient dimensions to carry a hydrant and it is not a trunk main: ibid s 58(2). See also WATER AND WATERWAYS vol 100 (2009) PARA 349.

17 Ibid s 58(1).

18 Ie the duties under ibid s 57(3)-(4): see the text to notes 8-9 supra. See also WATER AND WATERWAYS vol 100 (2009) PARA 348.

19 Ibid s 58(4).

20 See ibid s 58(3), disapplying s 57(5) (see the text to note 11 supra).

21 Ie those under the Fire Services Act s 14(1), (2), (3) (s 14(1), (3) as amended) and those under the Water Industry Act 1991 ss 57, 58: Fire Services Act 1947 s 14(4) (amended by the Water Act 1989 Sch 25 para 9; and the Water Consolidation (Consequential Provisions) Act 1991 s 2, Sch 1 para 4(1)); Water Industry Act 1991 ss 57(7), 58(5).

22 Ie under the Water Industry Act 1991 s 18: Fire Services Act 1947 s 14(4) (as amended: see note 22 supra); Water Industry Act 1991 s 57(7).

23 Fire Services Act 1947 s 14(4) (as amended: see note 22 supra); Water Industry Act 1991 s 57(7). See further WATER AND WATERWAYS vol 100 (2009) PARA 163. As to the Secretary of State see PARA 10 ante; and WATER AND WATERWAYS vol 100 (2009) PARA 15.

24 le any of its obligations under *ibid* s 57: see s 57(8).

25 *Ibid* ss 57(8), 58(5). The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 140. As to the prescribed sum see PARA 57 note 4 ante.

26 Water Industry Act 1991 ss 57(9), 58(5).

27 *Ibid* ss 57(6), 58(5).

## UPDATE

### 73-80 Fire authority's duty to ensure supply of water ... False alarms of fire

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### 75 Provision of fire-hydrants

NOTES 7, 10--For a hydrant to be in good working order it must be kept in such condition that it is fit for purposes of fire-fighting, does not present risk of contamination to water supply and is not a source of danger to members of the public or potential users: *Veolia Water Central Ltd (formerly Three Valleys Water plc) v London Fire and Emergency Planning Authority* [2009] EWHC 3109 (QB), [2010] All ER (D) 167 (Feb) (water authority entitled to charge actual costs of carrying out repairs plus amount that represented element of overheads attributable).

TEXT AND NOTES 11-14--1947 Act replaced by Fire and Rescue Services Act 2004. A water undertaker must cause the location of every fire hydrant provided by it to be clearly indicated by a notice or distinguishing mark (s 42(1)), and may place such a notice or mark on a wall or fence adjoining a highway or public place (s 42(2)). The expenses incurred by a water authority by making such a notice or mark are to be borne by the fire and rescue authority in whose area the hydrant is located: s 42(3). An obligation of a water undertaker under s 42(1) is enforceable by the Secretary of State or, in relation to Wales, the National Assembly for Wales under the Water Industry Act 1991 s 18: 2004 Act s 42(5).

References to a fire authority are now to a fire and rescue authority: 1991 Act s 57(2), (4), (5) (amended by the 2004 Act Sch 1 para 76(2), (3)). Where a fire-hydrant is damaged as the result of any use made of it with the authority of a water undertaker, other than use for the purposes of fire-fighting or for any other purposes of a fire and rescue authority, the fire and rescue authority is not liable for the cost of repairing or replacing the hydrant: 1991 Act s 57(5A) (added by the 2004 Act Sch 1 para 76(4)).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(3) WATER SUPPLY/76. Civil liability of water undertakers.

## **76. Civil liability of water undertakers.**

Where the Secretary of State<sup>1</sup> or the Director General of Water Services<sup>2</sup> is satisfied that a relevant water undertaker<sup>3</sup> is contravening any condition of its appointment in relation to which he is the enforcement authority<sup>4</sup> or certain statutory or other requirements<sup>5</sup> or has contravened any such condition or requirement and is likely to do so again<sup>6</sup>, he must make such provision as is requisite for the purpose of securing compliance with that condition or requirement by a final or provisional enforcement order<sup>7</sup>.

After consultation with the Central Fire Brigades Advisory Council<sup>8</sup>, the Secretary of State may make regulations providing for uniformity in fire-hydrants provided by statutory water undertakers and in the notices or marks indicating their situation; and in any case to which the regulations apply an undertaker will not be deemed to have complied with its obligations unless the hydrants, notices or marks provided by it conform with the regulations<sup>9</sup>.

Where a water undertaker places defective fire-hydrants or other fittings in streets it is liable for resulting injuries if it has been negligent<sup>10</sup>.

1 As to the Secretary of State see PARA 10 ante; and WATER AND WATERWAYS vol 100 (2009) PARA 15.

2 As to the Director General of Water Services see WATER AND WATERWAYS vol 100 (2009) PARA 13.

3 I.e. any company holding an appointment under the Water Industry Act 1991 Pt II Ch 1 (ss 6-17) (as amended): see WATER AND WATERWAYS vol 100 (2009) PARA 137.

4 Ibid s 18(1)(a)(i). See WATER AND WATERWAYS vol 100 (2009) PARA 163.

5 Ibid s 18(1)(a)(ii). See WATER AND WATERWAYS vol 100 (2009) PARA 163. For examples of such statutory requirements see PARAS 73, 75 ante.

6 Ibid s 18(1)(b). See WATER AND WATERWAYS vol 100 (2009) PARA 163.

7 See ibid s 18; and WATER AND WATERWAYS vol 100 (2009) PARAS 163-169.

8 See PARA 12 ante.

9 Fire Services Act 1947 s 14(6). At the date at which this volume states the law no such regulations had been made.

10 See *Bayley v Wolverhampton Waterworks Co* (1860) 6 H & N 241; and WATER AND WATERWAYS vol 101 (2009) PARA 465. See also *Stitt v Belfast Corpn* [1955] NI 201 (fire authority not liable for injuries caused by fire-hydrant installed by Belfast Corporation).

## **UPDATE**

### **73-80 Fire authority's duty to ensure supply of water ... False alarms of fire**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **76 Civil liability of water undertakers**



TEXT AND NOTES 8, 9--1947 Act replaced by the Fire and Rescue Services Act 2004. The Secretary of State or, in relation to Wales, the National Assembly for Wales may make regulations providing for uniformity in fire hydrants provided by water undertakers and in the notices or marks indicating their location: s 42(4). An obligation of a water undertaker under regulations under s 42(4) is enforceable by the Secretary of State or the Assembly under the Water Industry Act 1991 s 18: 2004 Act s 42(5). As to regulations made under the 2004 Act see PARA 10.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(3) WATER SUPPLY/77. Misuse of fire-hydrants.

## **77. Misuse of fire-hydrants.**

Any person who uses a fire-hydrant, otherwise than for fire-fighting purposes<sup>1</sup> or for any other purpose of a fire brigade<sup>2</sup> or for any purpose authorised by the water undertakers<sup>3</sup> or other persons to whom the hydrant belongs, or who damages or obstructs any fire-hydrant, otherwise than in consequence of its use for any such purpose, is liable on summary conviction to a fine<sup>4</sup>.

1 For the meaning of 'fire-fighting purposes' see PARA 59 ante.

2 As to fire brigades see PARA 35 et seq ante.

3 For the meaning of 'water undertakers' see PARA 73 note 4 ante.

4 Fire Services Act 1947 s 14(5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46, Sch 3). The fine referred to is a fine not exceeding level 2 on the standard scale: Fire Services Act 1947 s 14(5) (as so amended). As to the standard scale see PARA 7 note 1 ante.

As to the use of fire-hydrants in Greater London for flushing and other purposes see the London County Council (General Powers) Act 1894 s 4 (as amended); the Local Law (Greater London Council and Inner London Boroughs) Order 1965, SI 1965/540, Sch 2 art 4 (as amended); and LONDON GOVERNMENT.

## **UPDATE**

### **73-80 Fire authority's duty to ensure supply of water ... False alarms of fire**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **77 Misuse of fire-hydrants**

TEXT AND NOTES--1947 Act replaced by the Fire and Rescue Services Act 2004.

A person commits an offence if he uses a fire hydrant otherwise than for the purposes of fire-fighting or for any other purposes of a fire and rescue authority, or for any purpose authorised by the water undertaker or other person to whom the hydrant belongs: s 42(6). A person commits an offence if he damages or obstructs a fire hydrant, otherwise than in consequence of use for the purposes mentioned in s 42(6), and is liable on summary conviction to a fine not exceeding level 2 on the standard scale: s 42(7), (8).

NOTE 4--1894 Act s 4 repealed: 2004 Act Sch 2.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(3) WATER SUPPLY/78. Notice of proposed works.

## **78. Notice of proposed works.**

Where a person proposes to carry out any works for the purpose of supplying water to any part of the area of a fire authority<sup>1</sup>, he must give notice in writing to the fire authority not less than six weeks before the works are begun<sup>2</sup>.

At least seven days before any works which affect any fire-hydrant are begun, the authority or person by whom the works are to be executed must give notice in writing to the fire authority<sup>3</sup>.

Any authority or any other person who without reasonable excuse fails within the required period to give any notice which he is required<sup>4</sup> to give is guilty of an offence<sup>5</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 Fire Services Act 1947 s 16(1) (amended by the Water Act 1989 s 190(1), Sch 25 para 9(4)).

3 Fire Services Act 1947 s 16(2). Where in a case of emergency it is not practicable for notice to be given at the required time, the provisions are deemed to have been complied with if the notice is given as early as may be: s 16(2) proviso.

4 He is required to give under ibid s 16 (as amended): s 16(3) (added by the Water Act 1989 Sch 25 para 9(4)).

5 Fire Services Act 1947 s 16(3) (as added: see note 4 supra). A person guilty of such an offence is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale: s 16(3) (as so added). As to the standard scale see PARA 7 note 1 ante.

## **UPDATE**

### **73-80 Fire authority's duty to ensure supply of water ... False alarms of fire**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **78 Notice of proposed works**

TEXT AND NOTES--1947 Act replaced by the Fire and Rescue Services Act 2004. A person who proposes to carry out works for the purpose of supplying water to any part of the area of a fire and rescue authority must give at least 6 weeks' notice in writing to the authority, and a person who proposes to carry out works affecting a fire hydrant must give at least 7 days' notice in writing to the fire and rescue authority in whose area the hydrant is situated: s 43(1), (2). If it is not practicable for a person to give notice as required by s 43(1) or (2), he is to be regarded as having given the notice required by s 43(1) or (2) if he gives notice as soon as practicable: s 43(3). A person commits an offence if, without reasonable excuse, he fails to give notice as required by s 43(1) or (2), and is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 43(4), (5).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(4) OFFENCES/79. Obstructing the fire brigade.

## **(4) OFFENCES**

### **79. Obstructing the fire brigade.**

Any person who wilfully obstructs or interferes with any member of a fire brigade<sup>1</sup> who is engaged in operations for fire-fighting purposes<sup>2</sup> is liable on summary conviction to a fine<sup>3</sup>.

1 As to fire brigades see PARA 35 et seq ante.

2 For the meaning of 'fire-fighting purposes' see PARA 59 ante.

3 Fire Services Act 1947 s 30(2) (amended by virtue of the Criminal Justice Act 1982 ss 37, 39(2), 46, Sch 3). The fine referred to in the text is one not exceeding level 3 on the standard scale: Fire Services Act 1947 s 30(2) (as so amended). As to the standard scale see PARA 7 note 1 ante.

## **UPDATE**

### **73-80 Fire authority's duty to ensure supply of water ... False alarms of fire**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

### **79 Obstructing the fire brigade**

TEXT AND NOTES--1947 Act replaced by the Fire and Rescue Services Act 2004.

As to the offence of obstructing or interfering with an employee of a fire and rescue authority, see PARA 65, 66.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/4. FIRE-FIGHTING/(4) OFFENCES/80. False alarms of fire.

## **80. False alarms of fire.**

Any person who knowingly gives or causes to be given a false alarm of fire to any fire brigade<sup>1</sup> or to any member of such a brigade is liable on summary conviction to a fine<sup>2</sup> or to imprisonment<sup>3</sup>, or to both<sup>4</sup>.

1 As to fire brigades see PARA 35 et seq ante.

2 I.e. a fine not exceeding level 4 on the standard scale: Fire Services Act 1947 s 31(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 7 note 1 ante. The reference in the text to any fire brigade is to any fire brigade maintained in pursuance of the Fire Services Act 1947: see s 31(1) (as so amended).

3 I.e. imprisonment for a term not exceeding three months: *ibid* s 31(1) (as amended: see note 2 supra).

4 *Ibid* s 31(1) (as amended: see note 2 supra). As to false reports causing wasteful employment of the police see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) PARA 739.

### **UPDATE**

#### **73-80 Fire authority's duty to ensure supply of water ... False alarms of fire**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

## **80 False alarms of fire**

TEXT AND NOTES--1947 Act s 31 now Fire and Rescue Services Act 2004 s 49.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(1) LEGISLATION/81. Summary of legislation.

## **5. FIRE PRECAUTIONS**

### **(1) LEGISLATION**

#### **81. Summary of legislation.**

The Fire Precautions Act 1971<sup>1</sup> makes provision as to fire certificates<sup>2</sup> which are required in respect of any premises<sup>3</sup> falling within a class of premises which are put to a designated use<sup>4</sup>. The Act empowers the Secretary of State<sup>5</sup>, by order, to designate particular uses of premises<sup>6</sup>, and the Fire Precautions (Hotels and Boarding Houses) Order 1972<sup>7</sup> and the Fire Precautions (Factories, Offices, Shops and Railway Premises) Order 1989<sup>8</sup> have been made under this power. Where premises are exempted by the Fire Precautions Act 1971 from the requirement of a fire certificate<sup>9</sup>, the Act imposes a duty as to means of escape and for fighting fire in respect of such premises<sup>10</sup>.

The Fire Precautions Act 1971 provides for the Secretary of State, by regulations, to make provision as to the precautions which are to be taken in relation to the risk to persons in case of fire in the case of premises put to a designated use<sup>11</sup>. The regulations which have been made under this power are the Fire Precautions (Sub-surface Railway Stations) Regulations 1989<sup>12</sup>. The Fire Precautions Act 1971 prohibits any use of premises which involves a serious risk to persons on the premises in case of fire<sup>13</sup>. The Act also provides for the making of loans by local authorities<sup>14</sup> to meet certain expenditure occasioned by the Act<sup>15</sup> and similar provisions are contained in the Fire Precautions Loans Act 1973<sup>16</sup>.

The Fire Certificates (Special Premises) Regulations 1976<sup>17</sup> which were made under the Health and Safety at Work etc Act 1974 make provision in respect of fire certificates required for specified premises which contain inflammable plant or materials<sup>18</sup>.

The Fire Precautions (Workplace) Regulations 1997<sup>19</sup> which were made under various statutes, including certain provisions of the Fire Precautions Act 1971<sup>20</sup>, make provision in respect of fire precautions in the workplace<sup>21</sup>.

1 The Fire Precautions Act 1971 is now largely in force by virtue of the orders made under s 44(3), but at the date at which this volume states the law the following provisions of the Act had not been brought into force: ss 3, 4, 12(2), (9), (11), 16(1)(b), (2)(b), 19(3)(c), 34, 36 (as amended), 40 (as amended) (so far as it relates to ss 3, 4, 12(2), (9)).

2 As to fire certificates see PARA 111 et seq post. As to the form of application for a fire certificate see the Fire Precautions (Application for Certificate) Regulations 1989, SI 1989/77; and PARA 114 post.

3 For the meaning of 'premises' see PARA 82 post.

4 See the Fire Precautions Act 1971 s 1(1); and PARA 83 post.

5 As to the Secretary of State see PARA 10 ante.

6 See the Fire Precautions Act 1971 s 1(2) (as amended); and PARA 83 post.

7 Ie the Fire Precautions (Hotels and Boarding Houses) Order 1972, SI 1972/238: see PARAS 83, 85 post.

8 Ie the Fire Precautions (Factories, Offices, Shops and Railway Premises) Order 1989, SI 1989/76: see PARAS 83, 85-86 post.

9 As to premises exempt from the requirement for a fire certificate see PARA 85 post.

- 10 See the Fire Precautions Act 1971 s 9A (as added, substituted and amended); and PARA 88 post.
- 11 See *ibid* s 12 (as amended); and PARA 119 et seq post.
- 12 See the Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401 (as amended); and PARAS 123-130 post. These regulations provide for fire precautions to be taken in certain underground and low-level stations used by the members of the public.
- 13 See the Fire Precautions Act 1971 s 10 (as substituted); and PARA 142 post.
- 14 For the meaning of 'local authority' see PARA 92 note 9 post.
- 15 See the Fire Precautions Act 1971 s 36 (as amended); and PARA 148 post.
- 16 See PARA 148 post.
- 17 See the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003 (as amended).
- 18 See PARAS 96-110 post.
- 19 See the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended).
- 20 See the Fire Precautions Act 1971 ss 35 (see PARA 83 post), 40(8) (see PARA 82 post).
- 21 See PARAS 131-139 post. For the meaning of 'workplace' see PARA 133 note 4 post. Subject to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17(3) (see PARA 122 post), the provisions of the Fire Precautions Act 1971 listed in the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17(2) (see PARA 122 post) have effect in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if the requirements of the workplace fire precautions legislation were requirements of regulations made under the Fire Precautions Act 1971 s 12 (as amended) (see the text and note 11 *supra*; and PARAS 119-121 post): see the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17(1)(a); and PARA 122 post.

## UPDATE

### 81-149 Fire Precautions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 81-95 Summary of legislation ... Power of county court to modify agreements and leases and apportion expenses

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

### 81 Summary of legislation

NOTE 12--SI 1989/1401, in relation to England, revoked and partially replaced: see PARAS 123-130.

NOTE 17--SI 1976/2003 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.



Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(1) LEGISLATION/82. Meaning of 'premises' for the purpose of the Fire Precautions Act 1971.

## 82. Meaning of 'premises' for the purpose of the Fire Precautions Act 1971.

'Premises' means a building or part of a building<sup>1</sup>, and 'building' includes a temporary or movable building and also includes any permanent structure and any temporary structure other than a movable one<sup>2</sup>. Without prejudice to any exemption conferred by or under the Fire Precautions Act 1971<sup>3</sup>, where premises consisting of a part of a building are put to a designated use<sup>4</sup>, any other part of the building which is occupied together with those premises, and in connection with that use of them, is for the purposes of the Act to be treated as forming part of the premises put to that use<sup>5</sup>.

There are various provisions of the Fire Precautions Act 1971 which have effect subject to modifications<sup>6</sup> in relation to the following descriptions of premises:

- 50 (1) premises constituting, or forming part of, a factory within the meaning of the Factories Act 1961 and premises to which certain provisions of that Act<sup>7</sup> apply, referred to as factory premises<sup>8</sup>;
- 51 (2) office premises within the meaning of the Offices, Shops and Railway Premises Act 1963<sup>9</sup>, or premises deemed to be such premises for the purposes of that Act, referred to as office premises<sup>10</sup>;
- 52 (3) railway premises within the meaning of the Offices, Shops and Railway Premises Act 1963<sup>11</sup>, or premises deemed to be such for the purposes of that Act, referred to as railway premises<sup>12</sup>; and
- 53 (4) shop premises within the meaning of the Offices, Shops and Railway Premises Act 1963<sup>13</sup>, or premises deemed to be such premises for the purposes of that Act, referred to as shop premises<sup>14</sup>.

Premises which are deemed to form part of a mine for the purposes of the Mines and Quarries Act 1954<sup>15</sup> are excluded from the description of premises mentioned in heads (1) and (2) above<sup>16</sup>.

Certain provisions of the Fire Precautions Act 1971 apply to Crown premises<sup>17</sup> and the Act applies to premises occupied by the National Radiological Board as if they were premises occupied by the Crown<sup>18</sup>. Nothing in the Fire Precautions Act 1971 is taken to authorise the entry of premises occupied by the Crown<sup>19</sup>.

The Secretary of State may by regulations apply any of the provisions of the Fire Precautions Act 1971, subject to such modifications as may be prescribed, to: (a) vessels remaining moored, or on dry land, for such periods or in such circumstances as may be prescribed<sup>20</sup>; (b) tents or other movable structures of any prescribed description<sup>21</sup>; and (c) places of work in the open air of any prescribed description<sup>22</sup>.

1 Fire Precautions Act 1971 s 43(1). Where provisions of the Fire Precautions Act 1971 have effect in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if the requirements of the workplace fire precautions legislation (see PARA 122 note 1 post) were requirements of regulations made under the Fire Precautions Act 1971 s 12 (as amended) (see PARAS 119-121 post), those provisions also have effect in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if any reference, however expressed, in those provisions of the Fire Precautions Act 1971 to (1) 'premises' included a reference to a workplace, other than an excepted workplace (see the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17(1)(b)(i)); and (2) premises to which regulations made under the Fire Precautions Act 1971 s 12 (as amended) apply included a reference to a workplace in connection with which the obligations are

imposed by the workplace fire precautions legislation (see the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17(1)(b)(i)). As to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), see PARAS 131-139 post.

2 Fire Precautions Act 1971 s 43(1).

3 As to premises exempt from the requirement for a fire certificate see PARA 85 post.

4 For the meaning of 'designated use' see PARA 83 post.

5 Fire Precautions Act 1971 s 1(8).

6 See *ibid* s 28A(1) (s 28A added by the Fire Safety and Safety of Places of Sport Act 1987 s 16(1)).

7 See the Factories Act 1961 ss 123(1) and 124 (both as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 309-310 (application to electrical stations and institutions).

8 Fire Precautions Act 1971 s 28A, Sch 2 Pt I para 1(a) (s 28A (as added: see note 6 *supra*), Sch 2 added by the Fire Safety and Safety of Places of Sport Act 1987 s 16, Sch 1).

9 See HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 328.

10 Fire Precautions Act 1971 Sch 2 Pt I para 1(b) (as added: see note 8 *supra*).

11 See HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 330.

12 Fire Precautions Act 1971 Sch 2 Pt I para 1(c) (as added: see note 8 *supra*).

13 See HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 329.

14 Fire Precautions Act 1971 Sch 2 Pt I para 1(d) (as added: see note 8 *supra*).

15 See HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 326; MINES, MINERALS AND QUARRIES.

16 See the Fire Precautions Act 1971 Sch 2 Pt I para 2 (as added: see note 8 *supra*). The Secretary of State may by order vary the provisions of the Fire Precautions Act 1971 Sch 2 (as added) by amending, omitting or adding to the descriptions of premises or the modifications for the time being specified in it if it appears to him to be necessary or expedient in connection with any provision made by health and safety regulations under the Health and Safety at Work etc Act 1974 s 15 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 425); Fire Precautions Act 1971 s 28A(2) (as added: see note 8 *supra*). The power to make such an order is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 28A(3) (as so added). As to the Secretary of State see PARA 10 ante.

17 See *ibid* s 40 (as amended).

18 *Ibid* s 40(10B) (added by the Fire Precautions Act 1971 (Modifications) Regulations 1976, SI 1976/2007, reg 6; and substituted by the Fire Safety and Safety of Places of Sport Act 1987 s 18).

19 Fire Precautions Act 1971 s 40(9).

20 *Ibid* s 35(a). 'Prescribed' means prescribed by regulations made under the Fire Precautions Act 1971 by the Secretary of State: s 43(1).

21 *Ibid* s 35(b).

22 *Ibid* s 35(c) (added by the Fire Safety and Safety of Places of Sport Act 1987 s 17). Regulations under the Fire Precautions Act 1971 s 35 (as amended) bind the Crown to such extent, if any, as they so provide: s 40(8). The Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, (as amended) have been made under the Fire Precautions Act 1971 s 35 (as amended): see PARAS 131-139 post.

## UPDATE

### 81-149 Fire Precautions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4,

Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **81-95 Summary of legislation ... Power of county court to modify agreements and leases and apportion expenses**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

### **82 Meaning of 'premises' for the purpose of the Fire Precautions Act 1971**

TEXT AND NOTES 20-22--References to Fire Precautions Act 1971 should be to Fire Safety and Safety of Places of Sport Act 1987 s 35.

TEXT AND NOTE 22--Now head (c) if the local authority is not the fire and rescue authority, the fire and rescue authority, or (d) if the local authority is not the building authority, the building authority: *ibid* s 35(c), (d) (s 35(c) substituted, s 35(d) added by the Fire and Rescue Services Act 2004 Sch 1 para 63).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/A. DESIGNATED USES; PREMISES/83. Uses of premises for which fire certificate is compulsory.

## **(2) REQUIREMENT OF FIRE CERTIFICATE**

### **(i) When Fire Certificate Needed**

#### **A. DESIGNATED USES; PREMISES**

##### **83. Uses of premises for which fire certificate is compulsory.**

Any premises<sup>1</sup> which are put to a use for the time being designated by order made by the Secretary of State<sup>2</sup> require a fire certificate issued by the fire authority<sup>3</sup>, unless they are covered by an exemption conferred by or under the Fire Precautions Act 1971<sup>4</sup>. The Secretary of State must not designate any particular use unless it falls within at least one of the following classes of use:

- 54 (1) use as, or for any purpose involving the provision of, sleeping accommodation<sup>5</sup>;
- 55 (2) use as, or part of, an institution providing treatment or care<sup>6</sup>;
- 56 (3) use for purposes of entertainment, recreation or instruction or for the purposes of any club, society or association<sup>7</sup>;
- 57 (4) use for purposes of teaching, training or research<sup>8</sup>;
- 58 (5) use for any purpose involving access to the premises by members of the public, on payment or otherwise<sup>9</sup>;
- 59 (6) use as a place of work<sup>10</sup>.

The following uses of premises have been designated<sup>11</sup>: (a) use as factory premises<sup>12</sup>; (b) use as office premises<sup>13</sup>; (c) use as shop premises<sup>14</sup>; and (d) use as railway premises<sup>15</sup>, being (in each case) a use of premises in which persons are employed to work<sup>16</sup>; (e) use of premises for providing, in the course of carrying on the business of a hotel or boarding house keeper, sleeping accommodation for staff or sleeping, dining-room, drawing-room, ball-room or other accommodation for guests<sup>17</sup>.

Where a fire certificate becomes required<sup>18</sup> in respect of any premises at a time when there is in force in respect of those premises an existing certificate under the Factories Act 1961<sup>19</sup> or the Offices, Shops and Railway Premises Act 1963<sup>20</sup>, the existing certificate continues in force (irrespective of whether the provision under which it was issued remains in force) and is deemed to be a valid fire certificate<sup>21</sup> which may be amended, replaced or revoked<sup>22</sup> as a fire certificate<sup>23</sup>.

If any premises are at any time put to a designated use for which a fire certificate is required<sup>24</sup> then if no fire certificate covering that use is at that time in force in respect of the premises, the occupier<sup>25</sup> of the premises is guilty of an offence<sup>26</sup> unless he has applied for such a certificate and his application has yet to be granted or refused or an appeal against refusal is pending<sup>27</sup>.

1 For the meaning of 'premises' see PARA 82 ante.

2 See the Fire Precautions Act 1971 s 1(1), (2). Section 1 (as amended) applies to Crown premises: see s 40(1). The power to make an order under s 1 (as amended) is exercisable by statutory instrument, which is

subject to annulment in pursuance of a resolution of either House of Parliament (s 1(7)) and may be varied or revoked by a subsequent order (s 1(6)). An order under s 1 (as amended) may include such supplementary and incidental provisions as appear to the Secretary of State to be necessary or expedient for the purposes of the order: s 1(5). As to the Secretary of State see PARA 10 ante.

3 For the meaning of 'fire authority' see PARA 17 ante.

4 Fire Precautions Act 1971 s 1(1). An order under s 1 (as amended) may provide that a fire certificate is not required for premises of any description specified in the order notwithstanding that they are or form part of premises which are put to a designated use: s 1(3). An order under s 1 (as amended) may, as respects any designated use, specify descriptions of premises which qualify for exemption by a fire authority under s 5A (as added) (see PARA 86 post) from the requirement for a fire certificate in respect of premises which are put to that use: s 1(3A) (added by the Fire Safety and Safety of Places of Sport Act 1987 s 1(2)). For the purpose of any provision made in an order under the Fire Precautions Act 1971 s 1 (as amended) by virtue of s 1(3) or s 1(3A) (as added), a description of premises may be framed by reference to the purpose for which premises are used or the frequency of their use for any purpose or their situation or construction or arrangement or by reference to any other circumstances whatsoever; and different provision may be made in pursuance of s 1(3) or s 1(3A) (as added) in relation to different designated uses: s 1(4) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 1(2)). As to exempt premises see PARA 84 post.

5 Fire Precautions Act 1971 s 1(2)(a).

6 Ibid s 1(2)(b).

7 Ibid s 1(2)(c).

8 Ibid s 1(2)(d).

9 Ibid s 1(2)(e).

10 Ibid s 1(2)(f) (added by the Health and Safety at Work etc Act 1974 s 78(1), (2)). 'Work' means work as an employee or as a self-employed person: Health and Safety at Work etc Act 1974 s 52(1)(a) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302); definition applied by the Fire Precautions Act 1971 s 43(1) (definition added by the Health and Safety at Work etc Act 1974 ss 78, 83(2), Sch 10).

11 Ie for the purposes of the Fire Precautions Act 1971 s 1 (as amended) (which requires fire certificates for premises put to designated uses): see the text and notes 1-10 supra.

12 See the Fire Precautions (Factories, Offices, Shops and Railway Premises) Order 1989, SI 1989/76, art 4(a).

13 See ibid art 4(b).

14 See ibid art 4(c).

15 See ibid art 4(d).

16 See ibid art 4. Nothing in the Order has effect in relation to any railway premises to which regulations under the Fire Precautions Act 1971 s 12 (as amended) (regulations about fire precautions: see PARAS 119-121 post) for the time being apply (Fire Precautions (Factories, Offices, Shops and Railway Premises) Order 1989, SI 1989/76, art 7(a)); or any premises of a description for the time being specified in any regulations made under the Health and Safety at Work etc Act 1974 which provide for the issue of fire certificates by the Health and Safety Executive (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq) (Fire Precautions (Factories, Offices, Shops and Railway Premises) Order 1989, SI 1989/76, art 7(b)). 'Factory premises' means premises constituting, or forming part of, a factory within the meaning of the Factories Act 1961 and premises to which ss 123(1), 124 (application to electrical and institutions) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 309-310) apply: Fire Precautions (Factories, Offices, Shops and Railway Premises) Order 1989, SI 1989/76, art 2(1). 'Office premises', 'railway premises' and 'shop premises' mean (respectively, and subject to art 2(2), (3)) office premises, railway premises and shop premises within the meaning of the Offices, Shops and Railway Premises Act 1963 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 326 et seq), and premises deemed to be such premises for the purposes of that Act, other than premises consisting of a covered market place in which shop premises are aggregated: Fire Precautions (Factories, Offices, Shops and Railway Premises) Order 1989, SI 1989/76, art 2(1). For the purposes of the definition of 'railway premises', any reference in the Offices, Shops and Railways Premises Act 1963 s 1(4) (which defines 'railway premises' in that Act: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 330) to a building is to be construed as a reference to a building within the meaning of the Fire Precautions Act 1971, and accordingly the definition of 'building' in the Offices, Shops and Railway Premises Act 1963 s 90(1) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 328) does not have effect for that purpose: Fire Precautions (Factories, Offices, Shops and Railway Premises) Order 1989, SI 1989/76, art 2(2). In

the definition of 'shop premises' the reference to a covered market place is construed as limited to such a place where a market is held by virtue of a grant from the Crown or of prescription or under statutory authority: art 2(3). As to when such premises are exempt from the requirement for a fire certificate see PARA 85 post. As to the powers for a fire authority to grant and withdraw exemption in particular cases see PARA 86 post.

17 See the Fire Precautions (Hotels and Boarding Houses) Order 1972, SI 1972/238.

18 Ie by virtue of an order under the Fire Precautions Act 1971 s 1 (as amended): see the text and notes 1-10 supra.

19 Ie under the Factories Act 1961 s 40 (repealed): see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 660.

20 Ie under the Offices, Shops and Railway Premises Act 1963 s 29 (repealed): see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 660.

21 Health and Safety at Work etc Act 1974 s 78(10), Sch 8 para 2(1), (2)(a). The reference in the text to a valid fire certificate is to a Fire Precautions Act 1971 certificate validly issued with respect to the premises with respect to which it was issued and to cover the use or uses to which those premises were being put at the time: see the Health and Safety at Work etc Act 1974 Sch 8 para 2(a).

22 Ie in accordance with the Fire Precautions Act 1971.

23 Health and Safety at Work etc Act 1974 Sch 8 para 2(1), (2)(b). Without prejudice to Sch 8 para 2(2)(b), the existing certificate is, as from the said time to be treated as imposing the like requirements as were previously imposed in relation to it (1) in respect of a Factories Act certificate, by the Factories Act 1961 ss 41(1), 48(1)-(4), (6), (7), (10), 49(1) 51(1), 52(1), (4) (all repealed), and (so far as it relates to a proposed increase in the number of persons employed in any premises) s 41(3) (repealed); and (2) in respect of an Offices Act certificate, the Offices, Shops and Railways Act 1963 ss 30(1), 33, 34(1), (2), 36(1), 38(1) (all repealed), and (so far as it relates to a proposed increase in the number of persons employed to work in any premises at any one time) s 30(3) (repealed): see the Health and Safety at Work etc Act 1974 Sch 8 para 2(3). 'Factories Act certificate' means a certificate under the Factories Act 1961 s 40 (repealed); and 'Office Act certificate' means a certificate under the Offices, Shops and Railway Premises Act 1963 s 29 (repealed): Health and Safety at Work etc Act 1974 Sch 8 para 1.

24 Ie required by virtue of the Fire Precautions Act 1971 s 1 (as amended): see the text and notes 1-10 supra.

25 Where the premises in which a fire certificate is required are factory premises, office premises, railway premises or shop premises and (1) are held under a lease or agreement for a lease or under a licence and consist of part of a building all parts of which are in the same ownership; or (2) consist of part of a building in which different parts are owned by different persons, for references to the 'occupier' in ibid ss 7(1), (3A) (as added) there is substituted, in the case of premises falling within head (1) supra, references to the owner of the building and, in the case of premises falling within head (2) supra, references to the persons who between them own the building: s 28A, Sch 2 Pt II para 3(1), (2), (3) (s 28A and Sch 2 both added by the Fire Safety and Safety of Places of Sport Act 1987 s 16, Sch 1).

26 See the Fire Precautions Act 1971 s 7(1). A person guilty of an offence under s 7(1) is liable on summary conviction to a fine not exceeding the prescribed sum, or on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or both: s 7(5) (amended by the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see PARA 57 note 4 ante. The provisions of the Fire Precautions Act 1971 s 7 (as amended) apply to premises owned by the Crown but not occupied by it: s 40(1)(b). However, the expressions 'owner of the building' and 'the persons who between them own the building' do not include the Crown in the modifications of s 7(1) made by Sch 2 Pt II para 3(3) (as added) (see note 25 supra): Sch 2 Pt II para 3(7)(a) (as added: see note 25 supra).

27 See the Fire Precautions Act 1971 ss 7(3), 9(3). As to appeals see PARA 116 post. If, pending the disposal of an application for a fire certificate with respect to any premises, the premises are put to a designated use, then, if any requirement imposed by s 5(2A) (as added) (see PARA 114 post) is contravened by reason of anything done or not done to or in relation to any part of the relevant building, the occupier is guilty of an offence: s 7(3A) (added by Fire Safety and Safety of Places of Sport Act 1987 ss 8, 14). A person guilty of an offence under the Fire Precautions Act 1971 s 7(3A) (as added) is liable, on summary conviction, to a fine not exceeding level 5 on the standard scale: s 7(5A) (added by the Fire Safety and Safety of Places of Sport Act 1987 ss 8, 14). 'Relevant building', in relation to any premises which are the subject of an application for a fire certificate, means the building constituting or comprising the premises in question: see the Fire Precautions Act 1971 s 43(1). As to the standard scale see PARA 7 note 1 ante.

## UPDATE

## **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

## **81-95 Summary of legislation ... Power of county court to modify agreements and leases and apportion expenses**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

## **83 Uses of premises for which fire certificate is compulsory**

NOTES 21, 23--1974 Act s 78, Sch 8 repealed: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/A. DESIGNATED USES; PREMISES/84. Exempted classes of premises.

#### **84. Exempted classes of premises.**

Any premises<sup>1</sup> consisting of or comprised in a house which is occupied as a single private dwelling are exempt from the requirement to have a fire certificate<sup>2</sup>. Although premises owned or occupied by the Crown are not, as such, exempt<sup>3</sup>, no fire certificate is required in the case of premises constituting, or forming part of a prison<sup>4</sup> or constituting or forming part of a remand centre or young offender institution provided by the Secretary of State<sup>5</sup> or any premises occupied solely for purposes of the armed forces of the Crown<sup>6</sup>.

1 For the meaning of 'premises' see PARA 82 ante.

2 Fire Precautions Act 1971 ss 1, 2 (s 1 as amended). Where, in relation to premises occupied as a single private dwelling, there is habitual weekend use of those premises over a period of years for entertainment and for access by members of the public, the occupation at that time is not as a single private dwelling: see *West Midlands Fire and Civil Defence Authority v Falconer* (4 March 1993) Lexis, Enggen Library, Cases File, CA. Fire Precautions Act 1971 s 2 applies to Crown premises: s 40(1). As to the power of a fire authority to make a fire certificate compulsory for use of certain premises as a dwelling see s 3; and PARA 92 post.

As from a day to be appointed under the Smoke Detectors Act 1991 s 7 all new dwellings must be fitted with smoke detectors: see s 1; and BUILDING.

3 See the Fire Precautions Act 1971 s 40(1).

4 I.e. a prison within the meaning of the Prison Act 1952 (see PRISONS vol 36(2) (Reissue) PARA 542): Fire Precautions Act 1971 s 40(2)(a) (amended by virtue of the Criminal Justice Act 1988 s 123(6), Sch 8 para 1).

5 Fire Precautions Act 1971 s 40(2)(a) (as amended: see note 4 supra). The reference in the text to a remand centre or young offender institution is to one provided by the Secretary of State under the Prison Act 1952 s 43 (as substituted and amended) (see PRISONS vol 36(2) (Reissue) PARAS 643, 701): Fire Precautions Act 1971 s 40(2)(a) (as so amended). As to the Secretary of State see PARA 10 ante.

6 Ibid s 40(2)(d). As to the armed forces of the Crown see ARMED FORCES.

### **UPDATE**

#### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

#### **81-95 Summary of legislation ... Power of county court to modify agreements and leases and apportion expenses**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred,



in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/B. EXEMPTION FROM REQUIREMENT FOR FIRE CERTIFICATE/85. Premises exempt from the requirement for fire certificate.

## ***B. EXEMPTION FROM REQUIREMENT FOR FIRE CERTIFICATE***

### **85. Premises exempt from the requirement for fire certificate.**

A fire certificate is not required<sup>1</sup> for any factory premises, office premises, shop premises or railway premises<sup>2</sup> in which not more than 20 persons are at work at any one time<sup>3</sup>; and not more than ten persons are at work at any one time elsewhere than on the ground floor of the building constituting or comprising the premises<sup>4</sup>, unless one or more of the following conditions applies to the premises<sup>5</sup>:

- 60 (1) that the premises are in a building containing two or more sets of premises which are put to any of the designated uses<sup>6</sup> and the aggregate of the persons at work at any one time in both or (as the case may be) all those sets of premises exceeds 20<sup>7</sup>;
- 61 (2) that the premises are in a building containing two or more sets of premises which are put to any of such uses and in both or (as the case may be) all those sets of premises the aggregate of the persons at work at any one time elsewhere than on the ground floor of the building exceeds ten<sup>8</sup>; and
- 62 (3) that, in the case of factory premises, explosive or highly flammable materials (other than materials of such a kind and in such a quantity that the fire authority have determined that they do not constitute a serious additional risk to persons in the premises in case of fire) are stored or used in or under the premises<sup>9</sup>.

A fire certificate is not required<sup>10</sup> in relation to any premises used for providing, in the course of carrying on the business of a hotel or boarding house keeper, sleeping accommodation for staff or sleeping, dining-room, drawing-room, ball-room or other accommodation for guests<sup>11</sup> unless either:

- 63 (a) sleeping accommodation is provided in those premises for more than six persons being staff or guests<sup>12</sup>; or
- 64 (b) some sleeping accommodation is provided in those premises for staff or guests on any floor above the first floor of the building which constitutes or comprises the premises<sup>13</sup>; or
- 65 (c) some sleeping accommodation is provided in those premises for staff or guests below the ground floor of the building which constitutes or comprises the premises<sup>14</sup>.

1    Ie by virtue of the Fire Precautions Act 1971 s 1 (as amended): see PARA 83 ante.

2    Ie notwithstanding the provisions of the Fire Precautions (Factories, Offices, Shops and Railway Premises) Order 1989, SI 1989/76, art 4: see PARA 83 ante. For the meaning of 'factory premises', 'office premises', 'shop premises' and 'railway premises' see PARA 83 note 16 ante.

3    Ibid art 5(1)(a).

4    Ibid art 5(1)(b). For the meaning of 'building' see PARA 82 ante.

5    Ibid art 5(1).

- 6 le designated by *ibid* art 4: see PARA 83 ante.
- 7 *Ibid* art 5(2)(a).
- 8 *Ibid* art 5(2)(b).
- 9 *Ibid* art 5(2)(c). Any reference in art 5 to persons at work is a reference to any of the following persons: (1) an individual who works under a contract of employment or apprenticeship (art 5(3)(a)); (2) an individual who works for gain or reward otherwise than under a contract of employment or apprenticeship, whether or not he employs other persons (art 5(3)(b)); (3) a person receiving training provided pursuant to arrangements made (whether before or after the coming into force of the Employment Act 1988 s 25 (see EMPLOYMENT vol 40 (2009) PARA 562)) under the Employment and Training Act 1973 s 2 (as substituted and amended) (see EMPLOYMENT vol 40 (2009) PARA 563) (Fire Precautions (Factories, Offices, Shops and Railway Premises) Order 1989, SI 1989/76, art 5(3)(c)).
- 10 le by the Fire Precautions Act 1971 s 1 (as amended): see PARA 83 ante.
- 11 Fire Precautions (Hotels and Boarding Houses) Order 1972, SI 1972/238, art 3.
- 12 *Ibid* art 3(a). 'Guests' means members of the general public, being travellers, holiday-makers or other persons, for whom sleeping accommodation is provided: art 2.
- 13 *Ibid* art 3(b). 'First floor' means the floor above the ground floor: art 2.
- 14 *Ibid* art 3(c).

## UPDATE

### 81-149 Fire Precautions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 81-95 Summary of legislation ... Power of county court to modify agreements and leases and apportion expenses

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

### 85 Premises exempt from the requirement for fire certificate

TEXT AND NOTE 9--For 'fire authority' read 'fire and rescue authority': SI 1989/76 art 5(2) (c) (amended by SI 2004/3168 (England), SI 2005/2929 (Wales)).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/B. EXEMPTION FROM REQUIREMENT FOR FIRE CERTIFICATE/86. Powers of fire authority to grant and withdraw exemption in particular cases.

## **86. Powers of fire authority to grant and withdraw exemption in particular cases.**

A fire authority<sup>1</sup> may, if it thinks fit as regards any premises<sup>2</sup> which appear to it to be premises qualifying for exemption as respects any particular use, grant exemption from the requirement to have a fire certificate covering that use<sup>3</sup>. Such exemption may be granted by the fire authority, with or without the making of an application for the purpose, on the making of an application for a fire certificate with respect to the premises covering that use<sup>4</sup>, or at any time during the currency of a fire certificate with respect to the premises which covers that use<sup>5</sup>.

In deciding whether or not to grant exemption for any premises the fire authority must have regard to all the circumstances of the case and in particular to the degree of seriousness of the risk in case of fire to persons in the premises<sup>6</sup>. For the purpose of making that decision the fire authority may require the applicant or, as the case may be, the occupier<sup>7</sup> of the premises to give such information as it requires about the premises and any matter connected with them<sup>8</sup>, and cause an inspection of the relevant building to be carried out<sup>9</sup>.

The effect of the grant of exemption as respects any particular use of premises is that, during the currency of the exemption, no fire certificate in respect of the premises is required to cover that use<sup>10</sup>, and accordingly where the grant is made on an application for a fire certificate, the grant disposes of the application or of so much of it as relates to that use<sup>11</sup>, and where the grant is made during the currency of a fire certificate, the certificate wholly or as respects that use ceases to have effect<sup>12</sup>.

On granting an exemption, the fire authority must, by notice to the applicant for the fire certificate or the occupier of the premises, as the case may be, inform him that it has granted exemption as respects the particular use or uses of the premises specified in the notice and of the effect of the grant<sup>13</sup>. A notice of the grant of exemption for any premises as respects a particular use of them may include a statement specifying the greatest number of persons of a description specified in the statement for the purposes of that use who, in the opinion of the fire authority, can safely be in the premises at any one time<sup>14</sup>.

A fire authority who has granted an exemption<sup>15</sup> from the requirement to have a fire certificate covering any particular use of premises may, if it thinks fit, at any time, withdraw the exemption<sup>16</sup>. In deciding whether or not to withdraw an exemption it has granted the fire authority must have regard to all the circumstances of the case and in particular to the degree of seriousness of the risk in case of fire to persons in the premises<sup>17</sup>. The fire authority may withdraw an exemption it has granted as respects any particular use of premises without exercising any of its powers of inspection or inquiry<sup>18</sup> but it must not withdraw the exemption without first giving notice to the occupier of the premises that it proposes to withdraw it and giving the reasons for the proposal and giving him an opportunity of making representations on the matter<sup>19</sup>. An exemption is withdrawn by serving a notice on the occupier of the premises to which the exemption relates stating that the exemption will cease to have effect as respects the particular use or uses of the premises specified in the notice on such date as is so specified, being a date not earlier than the end of the period of 14 days beginning with the date on which service of the notice is effected<sup>20</sup>. If premises cease to qualify for exemption<sup>21</sup> a fire authority who has granted such an exemption must notify the occupier of the premises of the fact and date of the cessation of the exemption<sup>22</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 For the meaning of 'premises' see PARA 82 ante.

3 Fire Precautions Act 1971 s 5A(1) (s 5A added by the Fire Safety and Safety of Places of Sport Act 1987 s 1(4)).

4 Fire Precautions Act 1971 s 5A(2)(a) (as added: see note 3 supra).

5 Ibid s 5A(2)(b) (as added: see note 3 supra).

6 Ibid s 5A(3) (as added: see note 3 supra).

7 Where the premises in which a fire certificate is required are factory premises, office premises, railway premises or shop premises and (1) are held under a lease or agreement for a lease or under a licence and consist of part of a building all parts of which are in the same ownership; or (2) consist of part of a building in which different parts are owned by different persons, for references to the 'occupier' in ibid ss 5A(4), (6), (8), 5B(3), (4), (5) (as added) there is substituted, in the case of premises falling within head (1) supra, references to the owner of the building and, in the case of premises falling within head (2) supra, references to the persons who between them own the building: s 28A, Sch 2 Pt II para 3(1), (2), (3) (s 28A and Sch 2 both added by the Fire Safety and Safety of Places of Sport Act 1987 s 16, Sch 1). As to factory premises, office premises, railway premises or shop premises see PARA 83 note 16 ante.

8 Fire Precautions Act 1971 s 5A(4)(a) (as added: see note 3 supra).

9 Ibid s 5A(4)(b) (as added: see note 3 supra). For the meaning of 'relevant building' see PARAS 83 note 27 ante, 111 note 5 post. The fire authority must not grant exemption under s 5A (as added) for any premises without causing an inspection to be carried out under s 5A(4) (as added) unless it has caused the premises to be inspected (under that or any other power) within the preceding 12 months: s 5A(5) (as so added: see note 3 supra).

As respects the uses of premises designated by the Fire Precautions (Factories, Offices, Shops and Railway Premises) Order 1989, SI 1989/76, art 4 (see PARA 83 text and note 12 ante), the following premises in relation to such a use qualify for exemption by a fire authority under the Fire Precautions Act 1971 s 5A (as added) from the requirement for a fire certificate in respect of premises which are put to that use (Fire Precautions (Factories, Offices, Shops and Railway Premises) Order 1989, SI 1989/76, art 6(1)): (1) in the case of a use of premises as factory premises, office premises or railway premises, any premises consisting of or comprised in the ground floor of a building; or the ground floor and basement of a building; or the ground floor and first floor of a building; or the ground floor, first floor and basement of a building in which the basement is separated from the ground floor by fire-resisting construction (art 6(2)); (2) in the case of a use of premises as shop premises, any premises consisting of or comprised in the ground floor of a building; or the ground floor and basement of a building in which the basement is separated from the ground floor by fire-resisting construction (art 6(3)). For these purposes, construction is treated as fire-resisting if, and only if, it is of such a nature as to be capable of providing resistance to fire for a period of not less than 30 minutes: art 6(4). 'Basement' means a floor (however described) immediately below the ground floor (art 2(1)); and 'first floor' means the floor above the ground floor (art 2(1)).

10 Fire Precautions Act 1971 s 5A(6) (as added: see note 3 supra).

11 Ibid s 5A(6)(a) (as added: see note 3 supra).

12 Ibid s 5A(6)(b) (as added: see note 3 supra).

13 Ibid s 5A(7) (as added: see note 3 supra).

14 Ibid s 5A(8) (as added: see note 3 supra). Where a notice of the grant of exemption for any premises includes a statement under s 5A(8) (as added) the fire authority may, by notice served on the occupier of the premises, direct that, as from a date specified in the notice, the statement is cancelled, or is to have effect as varied by the notice: s 5A(9) (as so added). On such a variation the statement is to be treated, so long as the variation remains in force, as if the variation were specified in it: s 5A(9) (as so added).

15 Ie under ibid s 5A (as added): see the text and notes 1-14 supra.

16 Ibid s 5B(1) (s 5B added by the Fire Safety and Safety of Places of Sport Act 1987 s 1(4)).

17 Fire Precautions Act 1971 s 5B(2) (as added: see note 16 supra).

18 Ie conferred by ibid s 19 (as amended): see PARA 141 post.

19 Ibid s 5B(3) (as added: see note 16 supra).

20 Ibid s 5B(4) (as added: see note 16 supra).

21 Ie under ibid s 5A (as added): see the text and notes 1-14 supra.

22 Ibid s 5B(5) (as added: see note 16 supra). Sections 5A and 5B (both as added) apply to Crown premises: s 40(1) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 18(2)).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **81-95 Summary of legislation ... Power of county court to modify agreements and leases and apportion expenses**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

### **86 Powers of fire [and rescue] authority to grant and withdraw exemption in particular cases**

NOTE 9--In SI 1989/76 art 6(1) for 'fire authority' read 'fire and rescue authority': art 6(1) (amended by SI 2004/3168 (England), SI 2005/2929 (Wales)).

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/B. EXEMPTION FROM REQUIREMENT FOR FIRE CERTIFICATE/87. Change of conditions affecting premises for which exemption has been granted.

# **87. Change of conditions affecting premises for which exemption has been granted.**

If, during the currency of an exemption<sup>1</sup> for any premises<sup>2</sup>, it is intended to carry out in relation to those premises certain proposals<sup>3</sup>, the occupier must, before the carrying out of the proposals is begun, give notice of the proposals to the fire authority<sup>4</sup>, and if the carrying out of the proposals is begun without such notice having been given, the occupier is guilty of an offence<sup>5</sup>. The proposals in question are any proposal:

- 66 (1) to make an extension of, or structural alteration to, the premises which would affect the means of escape from the premises<sup>6</sup>; or an alteration in the internal arrangement of the premises, or in the furniture or equipment with which the premises are provided, which would affect the means of escape from the premises<sup>7</sup>; or
- 67 (2) on the part of the occupier, to begin to keep explosive or highly flammable materials of any prescribed kind anywhere under, in or on the building which constitutes or comprises the premises in a quantity or aggregate quantity greater than the quantity prescribed as the maximum in relation to materials of that kind, or in relation to factory premises on the part of the occupier of the premises to begin to store or use explosive or highly flammable materials in the premises or materially to increase the extent of such storage or use<sup>8</sup>; or
- 68 (3) in a case where the notice of exemption<sup>9</sup> includes a statement<sup>10</sup> to make such a use of the premises as will involve there being in the premises at any one time a greater number of persons in relation to whom the statement applies than is specified or treated as specified in the statement<sup>11</sup>.

1    le under the Fire Precautions Act 1971 s 5A (as added): see PARA 86 ante.

2    For the meaning of 'premises' see PARA 82 ante.

3    le any proposals to which the Fire Precautions Act 1971 s 8A (as added) applies: see the text and notes 5-11 infra.

4    For the meaning of 'fire authority' see PARA 17 ante.

5    Fire Precautions Act 1971 s 8A(1) (s 8A added by the Fire Safety and Safety of Places of Sport Act 1987 s 2(1)). A person guilty of an offence under the Fire Precautions Act 1971 s 8A(1) (as added) is liable on summary conviction, to a fine not exceeding the statutory maximum or, on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or both: s 8A(3) (as so added). As to the statutory maximum see PARA 75 note 25 ante.

Where the premises in which a fire certificate is required are factory premises, office premises, railway premises or shop premises and (1) are held under a lease or agreement for a lease or under a licence and consist of part of a building all parts of which are in the same ownership; or (2) consist of part of a building in which different parts are owned by different persons, if, during the currency of an exemption granted under s 5A (as added) (see PARA 86 ante) for any premises, it is intended to carry out in relation to those premises any proposals to which s 8A (as added) applies, the occupier must, before the carrying out of the proposals is begun, give notice of the proposals to the fire authority and the occupier must, before the carrying out of the proposals is begun, furnish to the persons responsible for giving notice of the proposals to the fire authority any information in his possession which is relevant to those proposals; and if the carrying out of the proposals is begun without such notice having been given, the occupier is guilty of an offence: s 8A(1) (as so added and as modified by s 28A, Sch 2 Pt II para 3(1), (5) (s 28A and Sch 2 both added by Fire Safety and Safety of Places of Sport Act 1987 s 16, Sch 1)). Where the premises in which a fire certificate is required are factory premises,

office premises, railway premises or shop premises and (a) are held under a lease or agreement for a lease or under a licence and consist of part of a building all parts of which are in the same ownership; or (b) consist of part of a building in which different parts are owned by different persons, for references to the 'occupier' in the Fire Precautions Act 1971 s 8A(1) (as added) (except the reference inserted by Sch 2 Pt II para 3(5) (as added)) there is substituted, in the case of premises falling within head (a) supra and in relation to which it is intended to carry out proposals falling within s 8A(2)(a) (as added) (see notes 6-7 infra) or (c) (as added) (see note 11 infra), references to the owner of the building; and in the case of premises falling within head (b) supra and in relation to which it is intended to carry out proposals falling within s 8A(2)(a) (as added) (see notes 6-7 infra) or (c) (as added) (see note 11 infra), references to the persons who between them own the building: Sch 2 Pt II para 3(1), (6) (as so added). As to factory premises, office premises, railway premises or shop premises see PARA 83 note 16 ante.

Section 8A (as added) applies to premises owned by the Crown but not occupied by it: s 40(1)(b) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 18). However, the expressions 'owner of the building' and 'the persons who between them own the building' do not include the Crown in the modifications made by the Fire Precautions Act 1971 Sch 2 Pt II para 3(6) (as added) of the word 'occupier' in the second place it occurs in s 8A(1) (as added): Sch 2 Pt II para 3(7)(b) (as so added).

6 Ibid s 8A(2)(a)(i) (as added: see note 5 supra). 'Escape', in relation to premises, means escape from them to some place of safety beyond the building which constitutes or comprises the premises and any area enclosed by it or enclosed with it; and accordingly, for the purposes of any provision of the Fire Precautions Act 1971 relating to means of escape, consideration may be given to, and conditions or requirements imposed as respects, any place or thing by means of which a person escapes from premises to a place of safety: s 5(5) (added by the Fire Safety and Safety of Places of Sport Act 1987 s 4(2)). For the meaning of 'building' see PARA 82 ante. For the meaning of 'furniture' see PARA 112 note 9 post.

7 Fire Precautions Act 1971 s 8A(2)(a)(ii) (as added: see note 5 supra).

8 Ibid s 8A(2)(b) (as added: see note 5 supra; and modified by Sch 2 Pt II para 6 (as added: see note 5 supra)). For the meaning of 'prescribed' see PARA 82 note 20 ante. At the date at which this volume states the law no regulations had been made under s 8A (as added).

9 Ie under ibid s 5A (as added): see PARA 86 ante.

10 Ie under ibid s 5A(8) (as added): see PARA 86 text and note 14 ante.

11 Ibid s 8A(2)(c) (as added: see note 5 supra).

## UPDATE

### 81-149 Fire Precautions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 81-95 Summary of legislation ... Power of county court to modify agreements and leases and apportion expenses

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.



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## **88. Duty as to means of escape and for fighting fire.**

All premises<sup>1</sup> which are exempt from the requirements for a fire certificate<sup>2</sup> must be provided with such means of escape<sup>3</sup> in case of fire<sup>4</sup>, and such means for fighting fire<sup>5</sup>, as may reasonably be required in the circumstances of the case<sup>6</sup>.

In the event of a contravention of this duty<sup>7</sup> the occupier<sup>8</sup> of the premises is guilty of an offence<sup>9</sup> unless the contravention is the subject of an improvement notice<sup>10</sup>.

1 For the meaning of 'premises' see PARA 82 ante.

2 Ie exempt by virtue of a provision made in an order under the Fire Precautions Act 1971 s 1 (as amended) (see PARA 83 ante) by virtue of s 1(3) (see PARA 83 ante), or the grant of exemption by a fire authority under s 5A (as added) (see PARA 86 ante) but not where the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, Pt II (regs 3-6) (as amended) (see PARAS 133-135 post) applies: see the Fire Precautions Act 1971 s 9A(2) (s 9A added by the Health and Safety at Work etc Act 1974 s 78; substituted by the Fire Safety and Safety of Places of Sport Act 1987 s 5; the Fire Precautions Act 1971 s 9A(2) (as so added and substituted) further amended by the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 22). For the meaning of 'fire authority' see PARA 17 ante. The Fire Precautions Act 1971 s 9A (as added, substituted and amended) applies to premises owned by the Crown but not occupied by it (s 40(1)(b)) (amended by the Health and Safety at Work etc Act 1974 s 78); and the Fire Precautions Act 1971 s 9A (as added, substituted and amended), except s 9A(3), (4) (as added and substituted), applies to premises occupied by the Crown (s 40(1)(a)) (amended by the Health and Safety at Work etc Act 1974 s 78). However, the expressions 'owner of the building' and 'the persons who between them own the building' do not include the Crown in the modifications of the Fire Precautions Act 1971 s 9A(3) (as added and substituted) made by s 28A, Sch 2 Pt II para 3(3) (as added) (see note 8 infra): Sch 2 Pt II para 3(7)(a) (s 28A and Sch 2 both added by the Fire Safety and Safety of Places of Sport Act 1987 s 16, Sch 1).

3 For the meaning of 'escape' see PARA 87 note 6 ante.

4 Fire Precautions Act 1971 s 9A(1)(a) (as added and substituted), s 9A(2) (as added, substituted and amended): see note 2 supra.

5 Ibid s 9A(1)(b) (as added and substituted), s 9A(2) (as added, substituted and amended): see note 2 supra.

6 Ibid s 9A(1) (as added and substituted), s 9A(2) (as added, substituted and amended): see note 2 supra. As to the requirement for certain new buildings in London to have means of escape in case of fire see the London Building Acts (Amendment) Act 1939 s 34 (as amended); and BUILDING. As to where certain old buildings in London are not provided with proper and sufficient means of escape in case of fire see s 35 (as amended); and BUILDING. The application of s 35 (as amended) is excluded by the Fire Precautions Act 1971 s 30(3): see PARA 147 post.

7 Ie imposed by ibid s 9A(1) (as added and substituted): see the text and notes 1-6 supra.

8 Where the premises in which a fire certificate is required are factory premises, office premises, railway premises or shop premises and (1) are held under a lease or agreement for a lease or under a licence and consist of part of a building all parts of which are in the same ownership; or (2) consist of part of a building in which different parts are owned by different persons, for references to the 'occupier' in ibid s 9A(3) (as added and substituted) there is substituted, in the case of premises falling within head (1) supra, references to the owner of the building and, in the case of premises falling within head (2) supra, references to the persons who between them own the building: Sch 2 Pt II para 3(1), (2), (3) (as added: see note 2 supra). As to factory premises, office premises, railway premises or shop premises see PARA 83 note 16 ante.

9 Ibid s 9A(3) (as added and substituted: see note 2 supra). A person guilty of the offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 9A(3) (as so added and substituted). As to the standard scale see PARA 7 note 1 ante.

<sup>10</sup> Ibid s 9A(4) (as added and substituted: see note 2 supra). The reference in the text to an improvement notice is to one under s 9D (as added) (see PARA 90 post): s 9A(4) (as so added and substituted).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **81-95 Summary of legislation ... Power of county court to modify agreements and leases and apportion expenses**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

### **88 Duty as to means of escape and for fighting fire**

NOTE 6--1939 Act s 34 repealed: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/B. EXEMPTION FROM REQUIREMENT FOR FIRE CERTIFICATE/89. Codes of practice as to means of escape and for fighting fire.

## **89. Codes of practice as to means of escape and for fighting fire.**

The Secretary of State<sup>1</sup> may from time to time, after consultation with such persons or bodies of persons as appear to him requisite<sup>2</sup> (1) prepare and issue codes of practice for the purpose of providing practical guidance on how to comply with the duty as to means of escape and fighting fire<sup>3</sup>; and (2) revise any such code by revoking, varying, amending or adding to the provisions of the code<sup>4</sup>.

Such a code<sup>5</sup> and any alterations proposed to be made on its revision must be laid before both Houses of Parliament, and the Secretary of State must not issue the code or revised code, as the case may be, until after the end of the period of 40 days beginning with the day on which the code or the proposed alterations were laid<sup>6</sup>. If, within this period, either House resolves that the code should not be issued or the proposed alterations should not be made, as the case may be, the Secretary of State must not issue the code or revised code, but this is without prejudice to his power<sup>7</sup> to lay further codes or proposed alterations before Parliament<sup>8</sup>.

A failure on the part of a person to observe any provision of a code of practice<sup>9</sup> does not of itself render him liable to any criminal or civil proceedings<sup>10</sup>. If, in any proceedings whether civil or criminal under the Fire Precautions Act 1971, it is alleged that there has been a contravention<sup>11</sup> on the part of any person of the duty as to means of escape and for fighting fire<sup>12</sup> a failure to observe a provision of a code of practice<sup>13</sup> may be relied on as tending to establish liability<sup>14</sup>; and compliance with such a code may be relied on as tending to negative liability<sup>15</sup>.

1 As to the Secretary of State see PARA 10 ante.

2 Fire Precautions Act 1971 s 9B(1) (s 9B added by the Fire Safety and Safety of Places of Sport Act 1987 s 6).

3 Fire Precautions Act 1971 s 9B(1)(a) (as added: see note 2 supra). The reference in the text to the duty as to means of escape and fighting fire is to the duty imposed by s 9A (as added, substituted and amended): see PARA 88 ante.

4 Ibid s 9B(1)(b) (as added: see note 2 supra).

5 Ie a code prepared in pursuance of ibid s 9B (as added).

6 Ibid s 9B(2) (as added: see note 2 supra).

7 Ie under ibid s 9B(2) (as added): see note 6 supra.

8 Ibid s 9B(3) (as added: see note 2 supra). For these purposes where the code or proposed alterations are not laid before both Houses of Parliament on the same day, the later day is to be taken to be the day on which the code or the proposed alterations, as the case may be, were laid before both Houses (s 9B(4)(a) (as so added)); and in reckoning any period of 40 days, no account should be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days (s 9B(4)(b) (as so added)). In the Fire Precautions Act 1971, references to a code of practice under s 9B (as added) are references to such a code as it has effect for the time being, with any revisions, under s 9B (as added): s 9B(5) (as so added).

9 Ie under ibid s 9B (as added): see the text and notes 1-8 supra.

10 Ibid s 9C(1) (s 9C added by the Fire Safety and Safety of Places of Sport Act 1987 s 6).

11 'Contravention' includes failure to comply, and 'contravene' has a corresponding meaning: Fire Precautions Act 1971 s 43(1).

12 Ibid s 9C(2) (as added: see note 10 supra). The reference in the text to the duty as to means of escape and fighting fire is to the duty imposed by s 9A (as added, substituted and amended): see PARA 88 ante. For the meaning of 'escape' see PARA 87 note 6 ante.

13 Ie under ibid s 9B (as added): see the text and notes 1-8 supra.

14 Ibid s 9C(2)(a) (as added: see note 10 supra).

15 Ibid s 9C(2)(b) (as added: see note 10 supra). Sections 9B (as added) and 9C (as added) apply to Crown premises: see s 40(1) (amended by the Health and Safety at Work etc Act 1974 s 78; and the Fire Safety and Safety of Places of Sport Act 1987 s 18).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **81-95 Summary of legislation ... Power of county court to modify agreements and leases and apportion expenses**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/B. EXEMPTION FROM REQUIREMENT FOR FIRE CERTIFICATE/90. Improvement notices.

## 90. Improvement notices.

Where a fire authority<sup>1</sup> is of the opinion that the duty as to means of escape and fighting fire<sup>2</sup> has been contravened<sup>3</sup> in respect of any premises<sup>4</sup>, it may serve on the occupier<sup>5</sup> of those premises a notice, referred to as an improvement notice<sup>6</sup>, which (1) states it is of that opinion<sup>7</sup>; (2) specifies, by reference to a code of practice<sup>8</sup> if it thinks fit, what steps it considers are necessary to remedy that contravention<sup>9</sup>; and (3) requires the occupier to take steps to remedy that contravention within such period (ending not earlier than the period within which an appeal against the improvement notice can be brought<sup>10</sup>) as may be specified in the notice<sup>11</sup>.

It is an offence for a person to contravene any requirement imposed by an improvement notice<sup>12</sup>.

Where an improvement notice has been served<sup>13</sup> the fire authority may withdraw that notice at any time before the end of the period specified in the notice<sup>14</sup>; and if an appeal against the improvement notice is not pending, the fire authority may extend or further extend the period specified in the notice<sup>15</sup>.

Where any premises are applicable premises<sup>16</sup> and the building which constitutes or comprises the premises is a building to which, at the time of its erection, building regulations imposing requirements as to means of escape in case of fire applied<sup>17</sup>; and in connection with the erection of that building plans were, in accordance with building regulations, deposited with a local authority<sup>18</sup>, the fire authority must not serve an improvement notice<sup>19</sup> requiring structural or other alterations relating to the means of escape from the premises unless certain requirements<sup>20</sup> are satisfied in relation to those premises<sup>21</sup>.

Those requirements are satisfied<sup>22</sup>:

- 69 (a) if regulations are in force<sup>23</sup> applying to the premises in relation to any use of them as respects which exemption<sup>24</sup> has been granted, being regulations which impose requirements as to means of escape in case of fire; and the fire authority is satisfied that alterations to the building which constitutes or comprises the premises are necessary to bring the premises into compliance with the regulations in respect of those requirements<sup>25</sup>; or
- 70 (b) if the fire authority is satisfied that the means of escape in case of fire with which the premises are provided are inadequate in relation to any such use of the premises by reason of matters or circumstances of which particulars were not required by or under the building regulations to be supplied to the local authority in connection with the deposit of plans<sup>26</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 I.e. the duty imposed by the Fire Precautions Act 1971 s 9A (as added, substituted and amended): see PARA 88 ante. For the meaning of 'escape' see PARA 87 note 6 ante.

3 For the meaning of 'contravene' see PARA 89 note 13 ante.

4 I.e. to which the Fire Precautions Act 1971 s 9A (as added, substituted and amended) applies: see PARA 88 ante. For the meaning of 'premises' see PARA 82 ante.

5 Where the premises in which a fire certificate is required are factory premises, office premises, railway premises or shop premises and (1) are held under a lease or agreement for a lease or under a licence and

consist of part of a building all parts of which are in the same ownership; or (2) consist of part of a building in which different parts are owned by different persons, for references to the 'occupier' in *ibid* s 9D(1) (as added) there is substituted, in the case of premises falling within head (1) *supra*, references to the owner of the building and, in the case of premises falling within head (2) *supra*, references to the persons who between them own the building: s 28A, Sch 2 Pt II para 3(1), (2), (3) (s 28A and Sch 2 both added by the Fire Safety and Safety of Places of Sport Act 1987 s 16, Sch 1). As to factory premises, office premises, railway premises or shop premises see *PARA* 83 note 16 *ante*.

6 Fire Precautions Act 1971 s 9D(1) (s 9D added by Fire Safety and Safety of Places of Sport Act 1987 s 7(1)). Fire Precautions Act 1971 s 9D (as added) applies to premises owned by the Crown but not occupied by it: s 40(1)(b) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 18).

7 Fire Precautions Act 1971 s 9D(1)(a) (as added: see note 6 *supra*).

8 *Ie* under *ibid* s 9B (as added): see *PARA* 89 *ante*.

9 *Ibid* s 9D(1)(b) (as added: see note 6 *supra*).

10 *Ie* under *ibid* s 9E (as added): see *PARA* 91 *post*.

11 *Ibid* s 9D(1)(c) (as added: see note 6 *supra*).

12 *Ibid* s 9F(1) (s 9F added by the Fire and Safety of Places of Sport Act 1987 s 7(1)). A person guilty of an offence is liable, on summary conviction, to a fine not exceeding the statutory maximum; and, on conviction on indictment, to a fine, or imprisonment for a term not exceeding two years or both: Fire Precautions Act 1971 s 9F(2) (as so added). As to the statutory maximum see *PARA* 75 note 25 *ante*.

13 *Ibid* s 9D(2) (as added: see note 6 *supra*). The reference in the text to the service of an improvement notice is to such service under s 9D(1) (as added): see the text and notes 1-11 *supra*.

14 *Ibid* s 9D(2)(a) (as added: see note 6 *supra*).

15 *Ibid* s 9D(2)(b) (as added: see note 6 *supra*). As to rights of appeal against improvement notices see *PARA* 91 *post*.

16 *Ibid* s 9D(3) (as added: see note 6 *supra*). The reference in the text to applicable premises is to premises to which *ibid* s 9A (as added, substituted and amended) applies: see *PARA* 88 *ante*.

17 *Ibid* s 9D(3)(a) (as added: see note 6 *supra*). For the meaning of 'building' see *PARA* 82 *ante*.

18 *Ibid* s 9D(3)(b) (as added: see note 6 *supra*).

19 *Ie* in pursuance of *ibid* s 9D(1) (as added): see the text and notes 1-11 *supra*.

20 *Ie* the requirements set out in *ibid* s 9D(4) (as added): see the text and notes 22-26 *infra*.

21 *Ibid* s 9D(3) (as added: see note 6 *supra*). For these purposes, 'structural or other alterations relating to means of escape from the premises', in relation to any such premises as are mentioned in s 9D (as added), means structural or other alterations directly connected with the provision of the premises with adequate means of escape in case of fire: s 9D(5) (as so added).

22 *Ibid* s 9D(4) (as added: see note 6 *supra*).

23 *Ie* under *ibid* s 12 (as amended): see *PARAS* 119-121 *post*.

24 *Ie* under *ibid* s 5A (as added): see *PARA* 86 *ante*.

25 *Ibid* s 9D(4)(a) (as added: see note 6 *supra*).

26 *Ibid* s 9D(4)(b) (as added: see note 6 *supra*).

## UPDATE

### 81-149 Fire Precautions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

**81-95 Summary of legislation ... Power of county court to modify agreements and leases and apportion expenses**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

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## **91. Rights of appeal against improvement notices.**

A person on whom an improvement notice<sup>1</sup> is served may, within 21 days from the date on which the improvement notice is served, appeal to the court<sup>2</sup>.

On an appeal, the court may either cancel or affirm the notice, and, if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit<sup>3</sup>.

Where an appeal is brought against an improvement notice, the bringing of the appeal has the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal<sup>4</sup>.

<sup>1</sup> For the meaning of improvement notice see PARA 90 ante. For the meaning of 'notice' see PARA 92 note 4 post.

<sup>2</sup> Fire Precautions Act 1971 s 9E(1) (s 9E added by the Fire Safety and Safety of Places of Sport Act 1987 s 7(1)). Except in the Fire Precautions Act 1971 s 28 (as amended) (see PARA 95 post), the 'court' means a magistrates court acting for the petty sessions area in which they are situated: s 43(1).

<sup>3</sup> Ibid s 9E(2) (as added: see note 2 supra).

<sup>4</sup> Ibid s 9E(3) (as added: see note 2 supra).

## **UPDATE**

### **81-149 Fire Precautions**

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### **C. CERTAIN PREMISES USED AS DWELLINGS**

#### **92. Notice by fire authority making fire certificate compulsory.**

If in the case of any premises<sup>1</sup> it appears to the fire authority<sup>2</sup> that they are applicable premises<sup>3</sup> the authority may serve a notice<sup>4</sup> relating to those premises<sup>5</sup> on either the occupier of the premises<sup>6</sup> or the owner<sup>7</sup> of the premises<sup>8</sup> or a person (whether the occupier or owner of the premises or not) having the overall management of the building constituting or comprising the premises<sup>9</sup>. A fire certificate is required in respect of any premises which, while there is in force such a notice relating to them, are used as a dwelling<sup>10</sup>.

Applicable premises are any premises, not being excluded premises<sup>11</sup>, which have been, are being or are to be used as a dwelling if<sup>12</sup>:

- 71 (1) the premises consist of or comprise a room which:
  - 3 5. (a) has been, is being or is to be used as living accommodation<sup>13</sup> and which is below the ground floor of the building which constitutes or comprises the premises<sup>14</sup>; or
  6. (b) is two or more floors above the ground floor of that building<sup>15</sup>; or
  7. (c) is a room of which the floor is six metres or more above the surface of the ground on any side of that building<sup>16</sup>; or
- 4 72 (2) explosive or highly flammable materials of any prescribed kind have been, are being or are to be kept anywhere under, in or on the building in a quantity or aggregate quantity greater than the prescribed quantity as the maximum in relation to materials of that kind<sup>17</sup>.

A notice may not be served in respect of any premises consisting of or comprised in a house which is occupied as a single private dwelling or any premises consisting of or comprised in a house which is occupied by persons who do not form a single household<sup>18</sup>.

Where such a notice is served in respect of any premises, the person on whom it is served may, within 21 days from the service of the notice, appeal to the court on the ground either that the premises are outside the relevant statutory provisions<sup>19</sup> or that he does not occupy the specified position<sup>20</sup>. On appeal<sup>21</sup>, if the court is satisfied on either ground it must cancel the notice, but otherwise must by order confirm it<sup>22</sup>.

Unless the notice is previously withdrawn by the fire authority, it comes into force<sup>23</sup>:

- 73 (i) where no appeal is brought against it within the specified time<sup>24</sup>, at the end of 21 days from the expiration of that time<sup>25</sup>;
- 74 (ii) where such an appeal is so brought but is withdrawn or dismissed for want of prosecution, at the end of 21 days from the date of withdrawal or dismissal of the appeal<sup>26</sup>;
- 75 (iii) where an appeal is brought, is not withdrawn or dismissed, and is finally determined by the confirmation of the notice, at the end of 21 days from the date of the final determination of the appeal<sup>27</sup>.

Once a notice is in force<sup>28</sup>, then, if no fire certificate covering that use is at that time in force in respect of the premises, the notified person<sup>29</sup> is, unless he proves that at the time he no longer occupied the specified position, guilty of an offence<sup>30</sup>, unless he has applied for such a certificate and his application has yet to be granted or refused<sup>31</sup>.

1 For the meaning of 'premises' see PARA 82 ante.

2 For the meaning of 'fire authority' see PARA 17 ante.

3 The premises to which the Fire Precautions Act 1971 s 3 applies: see s 3(3); and the text and notes 11-17 infra. At the date at which this volume states the law no order bringing s 3 into force had been made.

4 The under *ibid* s 3. 'Notice' means a notice in writing: s 43(1). The notice must be in the prescribed form and must (1) specify the premises to which it relates (s 3(4)(a)); (2) give particulars of the facts by reason of which it appears to the fire authority that s 3 applies to the premises (s 3(4)(b)); (3) specify one of the positions mentioned in s 3(3) (see the text and notes 5-9 infra) and state that the person on whom the notice is being served is being served with it as occupier of that position (s 3(4)(c)); (4) indicate that on the coming into force of the notice a fire certificate will in the circumstances mentioned in s 3(6) (see the text and note 10 infra) be required in respect of the premises to which the notice relates (s 3(4)(d)); and (5) state the right of appeal against the notice conferred by s 4 (see the text and notes 19-22 infra) and the time within which such an appeal may be brought (s 3(4)(e)).

5 *Ibid* s 3(3).

6 *Ibid* s 3(3)(a).

7 The 'owner' means the person for the time being receiving the rackrent of the premises in connection with which the word is used, whether on his own account or as agent or trustee for another person, or who would so receive the rackrent if the premises were let at a rackrent: *ibid* s 43(1). Where provisions of the Fire Precautions Act 1971 have effect in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if the requirements of the workplace fire precautions legislation (see PARA 122 note 1 post) were requirements of regulations made under the Fire Precautions Act 1971 s 12 (as amended) (see PARAS 119-121 post), those provisions also have effect in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if any reference, however expressed, in those provisions of the Fire Precautions Act 1971 to an owner or occupier of premises included a reference to an employer or other person on whom obligations are imposed under the workplace fire precautions legislation in respect of a workplace: see the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17(1)(b)(iii). As to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), see PARAS 131-139 post.

8 Fire Precautions Act 1971 s 3(3)(b).

9 *Ibid* s 3(3)(c). For the meaning of 'building' see PARA 82 ante. Before a fire authority serves a notice under s 3 relating to any premises it must, if it is not the local authority for the area in which the premises are situated, consult that local authority: s 3(5) (which does not apply to premises occupied, or owned but not occupied by the Crown: see s 40(1)). 'Local authority' means, as respects England, the council of a London borough or district, the Common Council of the City of London or the Council of the Isles of Scilly; and as respects Wales, the council of a county or county borough: s 43(1) (amended by the Local Government (Wales) Act 1994 ss 22(3), 66(8), Sch 9 para 8, Sch 18; and the Local Authorities etc (Miscellaneous Provisions) (No 2) Order 1974, SI 1974/595, art 3(22), Sch 1 Pt I).

10 Fire Precautions Act 1971 s 3(6). A fire certificate issued with respect to any premises in relation to which a notice under s 3 is in force must be sent to the notified person and, if that person is not the occupier of the premises, a copy of the certificate must be sent to the occupier: s 6(9). The 'notified person', in relation to any premises in respect of which a notice under s 3 is in force, means the person on whom that notice was served: s 3(8)(a); s 43(1).

So long as the certificate is in force, it must be kept in the relevant building (s 6(9)(a)); and where a copy of a certificate is not kept in the relevant building, the notified person is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale, unless he proves that at the material time he no longer occupied the specified position (s 7(7)). 'Relevant building', in relation to any premises in relation to which a notice under s 3 is in force, means the building constituting or comprising the premises in question: see s 43(1). As to the standard scale see PARA 7 note 1 ante. Where a fire certificate issued with respect to any premises is required by s 6(8) (see PARA 111 post) to be sent to the occupier of the premises, the copy must be kept in the premises so long as the certificate is in force (s 6(9)(b)); and where the copy is not so kept, the

occupier of the premises is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: see s 7(6).

Where the premises in which a fire certificate is required are factory premises, office premises, railway premises or shop premises and (1) are held under a lease or agreement for a lease or under a licence and consist of part of a building all parts of which are in the same ownership; or (2) consist of part of a building in which different parts are owned by different persons, in the event of a contravention of s 6(8) in the case of a copy of a fire certificate required to be kept in any premises, the occupier of the premises is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 28A, Sch 2 Pt II para 3(1), (4) (s 28A and Sch 2 both added by Fire Safety and Safety of Places of Sport Act 1987 s 16, Sch 1).

11    Ie excluded by the Fire Precautions Act 1971 s 3(2): see the text and note 18 *infra*.

12    Ibid s 3(1).

13    Ibid s 3(1)(a).

14    Ibid s 3(1)(a)(i).

15    Ibid s 3(1)(a)(ii).

16    Ibid s 3(1)(a)(iii).

17    Ibid s 3(1)(b). For the meaning of 'prescribed' see PARA 82 note 20 *ante*.

18    See *ibid* s 3(2). The provisions of s 3 (except s 3(5): see the text and note 9 *supra*) apply to Crown premises: see s 40(1). At the date at which this volume states the law s 40(1), in so far as it relates to s 3, had not been brought into force. As to houses in multiple occupation see PARA 149 *post*.

19    Ibid s 4(1)(a). The reference in the text to the relevant statutory provisions is to the provisions of s 3: s 4(1)(a).

20    Ibid s 4(1)(b). At the date at which this volume states the law s 4 no order bringing s 4 into force had been made. Section 4 applies to Crown premises: s 40(1). At the date at which this volume states the law s 40(1), in so far as it relates to s 4, had not been brought into force. The 'specified position', in relation to a notice served under s 4, means the position specified in the notice in pursuance of s 3(4)(c) (see note 4 *supra*): s 3(8)(b); definition applied by s 43(1). Where, in the case of any premises, it appears to the fire authority that the notified person has ceased to occupy the specified position, it may serve a fresh notice under s 3 in respect of the premises; and on the coming into force of a notice so served, the previous notice relating to the premises ceases to have effect: s 3(7).

21    Ie under *ibid* s 4.

22    See *ibid* s 4(2). As to appeals see PARA 116 *post*. As to appeals to the Crown Court see MAGISTRATES.

23    Ibid s 4(3), (4).

24    Ie within the time mentioned in *ibid* s 4(1): see the text and notes 19-20 *supra*.

25    Ibid s 4(4)(a).

26    Ibid s 4(4)(b).

27    Ibid s 4(4)(c).

28    Ie under *ibid* s 3: see the text and notes 1-18 *supra*.

29    See note 10 *supra*.

30    Fire Precautions Act 1971 s 7(2). A person guilty of an offence under s 7(2) is liable on summary conviction to a fine not exceeding the prescribed sum, or on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or both: s 7(5) (amended by the Magistrates' Courts Act 1980 s 32(2)). As to the prescribed sum see PARA 57 note 4 *ante*.

31    Fire Precautions Act 1971 s 7(3). Where an appeal is brought under s 7 (as amended) against the refusal of the fire authority to issue a fire certificate with respect to any premises or the cancellation or amendment in pursuance of s 8(7) (see PARA 112 *post*) or (9) (see PARA 113 *post*) of a fire certificate issued with respect to any premises, a person is not guilty of an offence under s 7(2) (see the text and note 30 *supra*) by reason of the

premises in question being put to a designated use or used as a dwelling at a time between the relevant date and the final determination of the appeal: s 9(3).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **81-95 Summary of legislation ... Power of county court to modify agreements and leases and apportion expenses**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/C. CERTAIN PREMISES USED AS DWELLINGS/93. Application to county court in respect of use of certain premises as dwellings.

### **93. Application to county court in respect of use of certain premises as dwellings.**

Where there is in force a notice<sup>1</sup> relating to any premises (referred to as 'the relevant premises') the following<sup>2</sup> applies to any premises consisting of or comprised in the relevant building<sup>3</sup>.

A person who, by reason of the terms and conditions of an agreement or lease<sup>4</sup> relating to the relevant premises<sup>5</sup>, is prevented from carrying out or doing with respect to the premises any structural or other alterations or other thing whose carrying out or doing is requisite<sup>6</sup>:

- 76 (1) as being a step mentioned in a notice served in connection with the relevant premises<sup>7</sup>; or
- 77 (2) in order to secure compliance with a requirement imposed by a fire certificate issued with respect to the relevant premises<sup>8</sup>; or
- 78 (3) in order to secure compliance with a provision of regulations<sup>9</sup> which is, or will become, applicable to the premises by virtue of there being in force a notice<sup>10</sup> relating to the relevant premises<sup>11</sup>,

may apply to the county court within whose jurisdiction the premises are situated, and the court may make such an order setting aside or modifying any of the terms and conditions of the agreement or lease as the court considers just and equitable in the circumstances of the case<sup>12</sup>.

1    Ie under the Fire Precautions Act 1971 s 3: see PARA 92 ante.

2    Ie the provisions of *ibid* s 28 (as amended): see the text and notes 3-12 infra. For the meaning of 'premises' see PARA 82 ante.

3    *Ibid* s 28(1). For the meaning of 'relevant building' see PARA 92 note 10 ante.

4    For these purposes, references to the terms and conditions of an agreement or lease relating to any premises include references to the terms and conditions on or subject to which, by virtue of the Rent Act 1977 s 3 (see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 837), a statutory tenant retains possession of any premises: Fire Precautions Act 1971 s 28(2) (amended by the Rent Act 1977 s 155, Sch 23 para 49). For these purposes, 'statutory tenant' has the same meaning as in the Rent Act 1977 (see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 831): Fire Precautions Act 1971 s 28(2) (as so amended).

5    Ie any premises to which *ibid* s 28 (as amended) applies: see the text to notes 1-3 supra.

6    *Ibid* s 28(2).

7    *Ibid* s 28(2)(a). The reference in the text to a notice served in connection with the relevant premises is to one served under ss 5(4) (see PARA 115 post), 8(4) (see PARA 113 post), 8(5) (see PARA 113 post), and s 12(8)(b) (see PARA 121 post).

8    *Ibid* s 28(2)(b).

9    Ie under *ibid* s 12 (as amended): see PARAS 119-121 post.

10   Ie under *ibid* s 3: see PARA 92 ante.

11   *Ibid* s 28(2)(c).

12 Ibid s 28(2).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **81-95 Summary of legislation ... Power of county court to modify agreements and leases and apportion expenses**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/C. CERTAIN PREMISES USED AS DWELLINGS/94. Application to county court in respect of certain factory, office, shop or railway premises.

**94. Application to county court in respect of certain factory, office, shop or railway premises.**

Where any premises (referred to as 'the relevant premises') (1) are premises for which a fire certificate<sup>2</sup> is required, premises for which a fire certificate is in force, certain premises which are exempt from the requirement for a fire certificate<sup>1</sup> or premises to which certain regulations<sup>3</sup> apply; and (2) are factory premises, office premises, shop premises or railway premises<sup>4</sup>, the following<sup>5</sup> applies to the premises or to any other premises comprised in the same building<sup>6</sup>.

A person who, by reason of the terms and conditions of an agreement or lease<sup>7</sup> relating to the relevant premises<sup>8</sup>, is prevented from carrying out or doing with respect to the premises any structural or other alterations or other thing whose carrying out or doing is requisite<sup>9</sup>:

- 79 (a) as being a step mentioned in a notice served in connection with the relevant premises<sup>10</sup>; or
- 80 (b) in order to secure compliance with a requirement imposed by a fire certificate issued with respect to the relevant premises<sup>11</sup>; or
- 81 (c) in order to secure compliance with a certain statutory provisions<sup>12</sup>,

may apply to the county court within whose jurisdiction the premises are situated, and the court may make such an order setting aside or modifying any of the terms and conditions of the agreement or lease as the court considers just and equitable in the circumstances of the case<sup>13</sup>.

1 As to fire certificates see PARA 111 et seq post.

2 Ie premises to which the Fire Precautions Act 1971 s 9A (as added, substituted and amended) applies: see PARA 88 ante.

3 Ie regulations under ibid s 12 (as amended): see PARAS 119-121 post.

4 As to factory premises, office premises, railway premises or shop premises see PARA 83 note 16 ante.

5 Ie the provisions of the Fire Precautions Act 1971 s 28 (as amended): see the text and notes 5-13 infra.

6 Ibid s 28(1) (modified by s 28A, Sch 2 Pt II para 8) (s 28A and Sch 2 both added by the Fire Safety and Safety of Places of Sport Act 1987 s 16, Sch 1).

7 For these purposes, references to the terms and conditions of an agreement or lease relating to any premises include references to the terms and conditions on or subject to which, by virtue of the Rent Act 1977 s 3 (see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 837), a statutory tenant retains possession of any premises: Fire Precautions Act 1971 s 28(2) (amended by the Rent Act 1977 s 155, Sch 23 para 49). For these purposes, 'statutory tenant' has the same meaning as in the Rent Act 1977 (see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 831): Fire Precautions Act 1971 s 28(2) (amended by the Rent Act 1977 Sch 23 para 49).

8 Ie any premises to which the Fire Precautions Act 1971 s 28 (as amended) applies: see the text to notes 1-3 supra.

9 Ibid s 28(2).

10 Ibid s 28(2)(a) (modified by Schedule 2 para 8(iii)) (as added: see note 5 supra). The reference in the text to a notice served in connection with the relevant premises is to one served under s 5(4) (see PARA 115 post), s

8(4) (see PARA 113 post), s 8(5) (see PARA 113 post), s 12(8)(b) (see PARA 121 post); and s 9D(1) (as added) (see PARA 90 ante).

11 Ibid s 28(2)(b).

12 Ibid s 28(2)(c) (modified by Schedule 2 para 8(iii)) (as added: see note 5 supra). The reference in the text to certain statutory provisions is to s 9A (as added, substituted and amended) (see PARA 88 ante) and to regulations under s 12 (as amended) (see PARAS 119-121 post): see s 28(2)(c) (as so modified).

13 Ibid s 28(2).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **81-95 Summary of legislation ... Power of county court to modify agreements and leases and apportion expenses**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.



Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/C. CERTAIN PREMISES USED AS DWELLINGS/95. Power of county court to modify agreements and leases and apportion expenses.

## **95. Power of county court to modify agreements and leases and apportion expenses.**

Where, in the case of the relevant premises<sup>1</sup>, the carrying out or doing with respect to those premises of any structural or other alterations or other thing whose carrying out or doing is requisite<sup>2</sup> involves a person having an interest in the premises in expense or in increased expense, and he alleges that the whole or part of the expense or, as the case may be, the increase, ought to be borne by some other person having an interest in the premises, the first-mentioned person may apply to the county court within whose jurisdiction the premises are situated<sup>3</sup>, and the court may by order give such directions with respect to the persons by whom the expense or increase is to be borne, and the proportions in which it is to be borne by them<sup>4</sup>; and if need be, for modification of the terms of any agreement or lease relating to the premises so far as concerns rent payable in respect of the premises<sup>5</sup>, as the court considers just and equitable in the circumstances of the case<sup>6</sup>.

1    Ie premises to which the Fire Precautions Act 1971 s 28(1) applies. Section 28(1) as originally enacted applies, where there is in force a notice under s 3 (see PARA 92 ante) relating to any premises, to any premises consisting of or comprised in the relevant building: see PARA 93 ante. For the meaning of 'relevant building' see PARA 92 note 10 ante. Section 28(1) (as modified) applies where any premises (1) are premises for which a fire certificate is required, premises for which a fire certificate is in force, premises to which s 9A (as added, substituted and amended) (see PARA 88 ante) applies or premises to which regulations under s 12 (as amended) (see PARAS 119-121 post) apply; and (2) are factory premises, office premises, shop premises or railway premises, to the premises or to any other premises comprised in the same building: see PARA 94 ante. As to factory premises, office premises, railway premises or shop premises see PARA 83 note 16 ante.

2    Ie as mentioned in *ibid* s 28(2): see PARAS 93-94 ante.

3    *Ibid* s 28(3). As to county courts see COURTS.

4    *Ibid* s 28(3)(a).

5    *Ibid* s 28(3)(b).

6    *Ibid* s 28(3). On an application under s 28(3) the court must not direct the whole or any part of the expense or increase to be borne by a person other than the applicant by reason only of that other person being a statutory tenant of the premises or any part of the premises: s 28(3) proviso.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

**81-95 Summary of legislation ... Power of county court to modify agreements and leases and apportion expenses**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/D. SPECIFIED PREMISES/96. Fire certificate required for specified premises.

## ***D. SPECIFIED PREMISES***

### **96. Fire certificate required for specified premises.**

A fire certificate<sup>1</sup> is required in respect of specified premises<sup>2</sup> unless either (1) an exemption is granted in respect of them<sup>3</sup>; or (2) in the case of certain premises<sup>4</sup>, specified conditions<sup>5</sup> are satisfied<sup>6</sup>.

1 'Fire certificate' means a certificate issued under the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003 (as amended), by the Health and Safety Executive: reg 2(1)(a). As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 le specified in ibid reg 3, Sch 1 Pt I: see PARA 97 post. For these purposes, 'premises' includes any place and, in particular, includes (1) any vehicle, vessel, aircraft or hovercraft; (2) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or its subsoil, or resting on other land covered with water or its subsoil); and (3) any tent or movable structure: Health and Safety at Work etc Act 1974 s 53(1). Where any of the specified premises are within the close, curtilage or precincts of larger premises, any part of those premises used for the purposes of the specified premises (including use as a means of access) must be treated as forming part of the specified premises: Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 3(2).

3 Ibid reg 3(1)(a). As to exemptions see reg 15; and PARA 109 post.

4 le premises to which ibid Sch 1 para 15 applies (see PARA 97 text to notes 22-24 post): reg 3(1)(b).

5 le the conditions set out in ibid Sch 1 Pt II (paras 16-24) (see PARA 97 note 24 post): reg 3(1)(b).

6 Ibid reg 3(1)(b). Notwithstanding reg 3(1), a fire certificate is not required for any berth to which the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, apply (see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 700 et seq): Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 3A (added by SI 1987/37).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **96-110 Fire certificate required for specified premises ... Existing certificates deemed to have been issued for specified premises**

SI 1976/2003 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/D. SPECIFIED PREMISES/97. Specified premises.

## 97. Specified premises.

The specified premises for which a fire certificate<sup>1</sup> is required<sup>2</sup> are:

- 82 (1) any premises at which are carried on any manufacturing processes in which the total quantity of any highly flammable liquid<sup>3</sup> under pressure greater than atmospheric pressure and above its boiling point at atmospheric pressure may exceed 50 tonnes<sup>4</sup>;
- 83 (2) any premises at which is carried on the manufacture of expanded cellular plastics and at which the quantities manufactured are normally of or in excess of 50 tonnes per week<sup>5</sup>;
- 84 (3) any premises at which there is stored, or there are facilities provided for the storage of, liquefied petroleum gas<sup>6</sup> in quantities of, or in excess of, 100 tonnes except where that gas is kept for use at the premises either as a fuel or for the production of an atmosphere for the heat-treatment of metals<sup>7</sup>;
- 85 (4) any premises at which there is stored, or there are facilities provided for the storage of, liquefied natural gas in quantities of, or in excess of, 100 tonnes except where that gas is kept solely for use at the premises as a fuel<sup>8</sup>;
- 86 (5) any premises at which there is stored, or there are facilities provided for the storage of, any liquefied flammable gas consisting predominantly of methyl acetylene in quantities of, or in excess of, 100 tonnes except where that gas is kept solely for use at the premises as a fuel<sup>9</sup>;
- 87 (6) any premises at which oxygen is manufactured and at which there are stored, or there are facilities provided for the storage of, quantities of liquid oxygen of, or in excess of, 135 tonnes<sup>10</sup>;
- 88 (7) any premises at which there are stored, or there are facilities provided for the storage of, quantities of chlorine of, or in excess of, 50 tonnes except when the chlorine is kept solely for the purpose of water purification<sup>11</sup>;
- 89 (8) any premises at which artificial fertilisers are manufactured and at which there are stored, or there are facilities provided for the storage of, quantities of ammonia of, or in excess of, 250 tonnes<sup>12</sup>;
- 90 (9) any premises at which there are in process, manufacture, use or storage at any one time, or there are facilities provided for such processing, manufacture, use or storage of, quantities of certain specified materials in, or in excess of, certain specified quantities<sup>13</sup>;
- 91 (10) explosives factories or magazines which are required to be licensed under the Explosives Act 1875<sup>14</sup>;
- 92 (11) any building on the surface at any mine within the meaning of the Mines and Quarries Act 1954<sup>15</sup>;
- 93 (12) any premises in which there is comprised (a) any undertaking on a site for which a licence is required in accordance with the Nuclear Installations Act 1965<sup>16</sup>, or for which a permit is required<sup>17</sup>, or (b) any undertaking which would, except for the fact that it is carried on by the United Kingdom Atomic Energy Authority, or by or on behalf of the Crown, be required to have such a licence or permit<sup>18</sup>;
- 94 (13) any premises containing any machine or apparatus in which charged particles can be accelerated by the equivalent of a voltage of not less than 50 megavolts except where the premises are used as a hospital<sup>19</sup>;

- 95 (14) premises to which specified provisions of the Ionising Radiations Regulations 1985<sup>20</sup> apply<sup>21</sup>;
- 96 (15) any building or part of a building which either (a) is constructed for temporary occupation for the purposes of building operations or works of engineering construction<sup>22</sup>, or (b) is in existence at the first commencement there of any further operations or works<sup>23</sup>, and which, in either case, is used for any process or work ancillary to those operations or works<sup>24</sup>.

1 For the meaning of 'fire certificate' see PARA 96 note 1 ante.

2 As to this requirement see PARA 96 ante.

3 'Highly flammable liquid' has the same meaning as under the Highly Flammable Liquids and Liquefied Petroleum Gases Regulations 1972, SI 1972/917, reg 2(2) (definition substituted by SI 1993/1746; and amended by SI 1994/3247): Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 3, Sch 1 Pt III para 25(a) (amended by SI 1992/1811). Any reference to a provision made by an enactment or instrument is construed as a reference to that provision as amended by any enactment or instrument and as including a reference to any provision which re-enacts or replaces it: Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 3, Sch 1 Pt III para 25(b).

4 Ibid reg 3(1), Sch 1 Pt I para 1.

5 Ibid Sch 1 Pt I para 2.

6 'Liquefied petroleum gas' means commercial butane, commercial propane or any mixture of them; 'commercial butane' means a hydrocarbon mixture consisting predominantly of butane, butylene or any mixture of them; and 'commercial propane' means a hydrocarbon mixture consisting predominantly of propane, propylene or any mixture of them: ibid Sch 1 Pt III para 25(a).

7 Ibid Sch 1 Pt I para 3.

8 Ibid Sch 1 Pt I para 4.

9 Ibid Sch 1 Pt I para 5.

10 Ibid Sch 1 Pt I para 6.

11 Ibid Sch 1 Pt I para 7.

12 Ibid Sch 1 Pt I para 8.

13 Ibid Sch 1 Pt I para 9. The specified materials and quantities are: phosgene (5 tonnes); ethylene oxide (20 tonnes); carbon disulphide (50 tonnes); acrylonitrile (50 tonnes); hydrogen cyanide (50 tonnes); ethylene (100 tonnes); propylene (100 tonnes); and any highly flammable liquid (see note 3 supra) not otherwise specified (4,000 tonnes): Sch 1 Pt I para 9.

14 Ibid Sch 1 Pt I para 10; and see EXPLOSIVES vol 17(2) (Reissue) PARAS 924-951. See also note 3 supra.

15 Ibid Sch 1 Pt I para 11. For the meaning of 'mine' under the Mines and Quarries Act 1954 see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 5.

16 Ie in accordance with the Nuclear Installations Act 1965 s 1 (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1487): Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, Sch 1 Pt I para 12(a).

17 Ie in accordance with the Nuclear Installations Act 1965 s 2 (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1489): Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, Sch 1 Pt I para 12(a).

18 Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, Sch 1 Pt I para 12(b). As to the United Kingdom Atomic Energy Authority see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1363 et seq.

19 Ibid Sch 1 Pt I para 13.

20 Ie the Ionising Radiations Regulations 1985, SI 1985/1333, reg 26: see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1474. Regulation 26 applies to any site other than one for the time being licensed under the Nuclear Installations Act 1965: Ionising Radiations Regulations 1985, SI 1985/1333, reg 26(1), (7).

21 Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, Sch 1 Pt I para 14 (substituted by SI 1985/1333).

22 Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, Sch 1 Pt I para 15(a).

23 Ibid Sch 1 Pt I para 15(b).

24 Ibid Sch 1 Pt I para 15. A fire certificate is not required, however, for the premises specified in Sch 1 para 15 if:

- 1 (1) not more than 20 persons are employed at any one time in the building or part of the building (Sch 1 Pt II para 16);
- 2 (2) not more than ten persons are employed at any one time elsewhere than on the ground floor of the building or part of the building (Sch 1 Pt II para 17);
- 3 (3) no explosive or highly flammable material is stored or used in or under the building or part of the building (Sch 1 Pt II para 18);
- 4 (4) the building or part of the building is provided with such means of escape in case of fire for the persons employed there as may reasonably be required in the circumstances of the case (Sch 1 Pt II para 19);
- 5 (5) in the building or part of the building there are provided and maintained appropriate means for fighting fire which are so placed as to be readily available for use (Sch 1 Pt II para 20);
- 6 (6) while any person is in the building or part of the building for the purpose of employment or meals, the doors of the building or part and of any room in it in which he is, and any doors which afford a means of exit for persons employed in the building or part, are not locked or fastened in such a manner that they cannot easily and immediately be opened from the inside (Sch 1 Pt II para 21);
- 7 (7) any doors opening on to any staircase or corridor from any room in the building or part of the building in which more than ten persons are employed, except in the case of sliding doors, are constructed to open outwards (Sch 1 Pt II para 22);
- 8 (8) every window, door or other exit affording a means of escape from the building or part of the building in case of fire or giving access to it, other than the means of exit in ordinary use, is distinctively and conspicuously marked by a notice of adequate size (Sch 1 Pt II para 23); and
- 9 (9) the contents of any room in the building or part of the building in which persons are employed are so arranged or disposed that there is a free passageway for all persons employed in the room to a means of escape in case of fire (Sch 1 Pt II para 24).

## UPDATE

### 81-149 Fire Precautions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 96-110 Fire certificate required for specified premises ... Existing certificates deemed to have been issued for specified premises

SI 1976/2003 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.



Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/D. SPECIFIED PREMISES/98. Application for and issue of a fire certificate.

## 98. Application for and issue of a fire certificate.

An application for a fire certificate<sup>1</sup> must be made by the responsible person<sup>2</sup> to the Health and Safety Executive<sup>3</sup>, and must contain certain specified particulars<sup>4</sup>.

On receipt of the application the Executive may require the applicant, within a specified time, to furnish (1) such plans of the relevant premises as it may specify<sup>5</sup>; and (2) in so far as it is reasonably practicable for him to do so, such plans of adjoining premises as it may specify<sup>6</sup>. If the applicant fails to furnish the required plans within that time or such further time as the Executive may allow, the application is deemed to have been withdrawn at the end of that time or further time, as the case may be<sup>7</sup>.

Where an application for a fire certificate has been duly made and any specified plans have been duly furnished, the Executive must cause an inspection to be carried out<sup>8</sup>. If the Executive is satisfied that (a) the means of escape which are provided in case of fire<sup>9</sup>; (b) the means (other than means for fighting fire) which are provided for securing that those means of escape can be safely and effectively used at all material times<sup>10</sup>; (c) the means which are provided, whether on the premises or elsewhere, for fighting fire<sup>11</sup>; and (d) the means which are provided, whether on the premises or elsewhere, for giving warning in case of fire<sup>12</sup>, are such as may reasonably be required in the circumstances of the case in connection with the premises, the Executive must issue a fire certificate<sup>13</sup>.

If, after causing an inspection to be carried out, the Executive is not so satisfied, it must by notice served on the applicant (i) inform him of that fact and of the steps which would have to be taken to satisfy it<sup>14</sup>; and (ii) notify him that it will not issue a fire certificate unless those steps are taken (whether by the applicant or otherwise) within such time as may be specified in the notice<sup>15</sup>. If, at the end of that time or such further time as may be allowed by the Executive or by any order made on, or in proceedings arising out of an appeal<sup>16</sup> against the notice, those steps have not been taken, the fire certificate is deemed to have been refused<sup>17</sup>.

1 For the meaning of 'fire certificate' see PARA 96 note 1 ante.

2 'Responsible person' means the person having control of premises, whether as occupier or otherwise, in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not); except that in the case of a mine within the meaning of the Mines and Quarries Act 1954 (see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 5) the responsible person is the manager of that mine: Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 2(1)(a). As to notifying any change in the responsible person see PARA 104 post. For the meaning of 'premises' see PARA 96 note 2 ante. As to the manager of a mine see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARAS 534. As to the manager of a quarry see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARAS 535.

3 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

4 Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 4(1). The specified particulars are: (1) the address of the premises in respect of which the application is made; (2) a description of the premises by reference to the list set out in Sch 1 (see PARA 97 ante); (3) the nature of the processes carried on or to be carried on the premises; (4) the nature and approximate quantities of any explosive or highly flammable substance kept or to be kept on the premises; (5) the maximum number of persons likely to be on the premises at any one time; (6) the maximum number of persons likely to be in any building of which the premises form part at any one time; (7) the name and address of the occupier of the premises; (8) the name and address of any other person who has control of the premises; and (9) if the premises consist of part of a building, the name and postal address of the person or persons having control of the building or any part of it: reg 4(1), Sch 2.



- 5 Ibid reg 4(2)(a).
- 6 Ibid reg 4(2)(b). As to the meaning of 'reasonably practicable' see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 417.
- 7 Ibid reg 4(2).
- 8 Ibid reg 4(3).
- 9 Ibid reg 4(3)(a).
- 10 Ibid reg 4(3)(b).
- 11 Ibid reg 4(3)(c).
- 12 Ibid reg 4(3)(d).
- 13 Ibid reg 4(3).
- 14 Ibid reg 4(4)(a).
- 15 Ibid reg 4(4)(b).
- 16 Ie under ibid reg 12 (see PARA 106 post): reg 4(4).
- 17 Ibid reg 4(4).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **96-110 Fire certificate required for specified premises ... Existing certificates deemed to have been issued for specified premises**

SI 1976/2003 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/D. SPECIFIED PREMISES/99. Contents of fire certificates for specified premises.

## **99. Contents of fire certificates for specified premises.**

Every fire certificate<sup>1</sup> must specify: (1) the address of the premises<sup>2</sup>; (2) the name of the responsible person<sup>3</sup>; (3) the description of the premises by reference to the listed class or classes<sup>4</sup>; (4) the means of escape which are provided in case of fire<sup>5</sup>; (5) the means (other than means for fighting fire) provided for securing that those means of escape can be safely and effectively used at all material times<sup>6</sup>; (6) the type, number and location of the means which are provided (whether in the premises or elsewhere) for fighting fire<sup>7</sup>; and (7) the type and location of the means which are provided (whether in the premises or elsewhere) for giving warning in case of fire<sup>8</sup>. The fire certificate may specify these items by means of or by reference to a plan or photograph<sup>9</sup>.

A fire certificate may impose such conditions as the Health and Safety Executive<sup>10</sup> considers appropriate in the circumstances for: (a) securing that the means of escape in case of fire which are provided are properly maintained and kept free from obstruction<sup>11</sup>; (b) securing that the provisions for escape, fire-fighting and warning<sup>12</sup> are properly maintained<sup>13</sup>; (c) securing that the provisions for fire-fighting and warning<sup>14</sup> are tested and examined at regular intervals and that records are kept of those tests and examinations<sup>15</sup>; (d) securing that persons at work on the premises receive appropriate instruction and training in what to do in the case of fire, and that records are kept of instruction and training given for that purpose<sup>16</sup>; (e) limiting the number of persons who may be on the premises at any one time or at such times as the Executive may specify<sup>17</sup>; (f) limiting the quantity and disposition of any substance or article which may be on the premises at any one time or at such times as the Executive may specify<sup>18</sup>; and (g) other precautions to be observed in relation to the risk to persons in case of fire<sup>19</sup>. Any conditions imposed may be framed so as to apply to the whole of the premises or so as to apply to one or more parts of them, and different conditions may be imposed in relation to different parts<sup>20</sup>.

A fire certificate must be sent or delivered to the responsible person and where he is not the occupier of the premises a copy of it must be sent to the occupier<sup>21</sup>. An occupier of premises (whether or not he is the responsible person) must keep the fire certificate, or the copy as the case may be, on the premises and must make it available for inspection at reasonable times by any person who might be affected by any of its provisions<sup>22</sup>.

Where a fire certificate has been issued, the occupier of the premises (whether or not he is also the responsible person) must keep a notice posted at a suitable place on or about the premises to which it relates in such characters and in such a position as to be easily seen and read by any person who might be affected by any of the provisions of the certificate<sup>23</sup>. The notice must state (i) that a fire certificate has been issued<sup>24</sup>; (ii) where the fire certificate, or a copy of it, may be inspected<sup>25</sup>; and (iii) the date of posting of the notice<sup>26</sup>.

Where the responsible person is not the occupier he must keep the fire certificate and must make it available for inspection at reasonable times by any person who might be affected by any of its provisions<sup>27</sup>.

1 For the meaning of 'fire certificate' see PARA 96 note 1 ante. As to the issue of a fire certificate see PARA 98 ante.

2 Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 5(1)(a). For the meaning of 'premises' see PARA 96 note 2 ante.

- 3 Ibid reg 5(1)(b). For the meaning of 'responsible person' see PARA 98 note 2 ante.
- 4 Ie listed in ibid reg 3, Sch 1 (see PARA 97 ante): reg 5(1)(c).
- 5 Ibid reg 5(1)(d).
- 6 Ibid reg 5(1)(e).
- 7 Ibid reg 5(1)(f).
- 8 Ibid reg 5(1)(g).
- 9 Ibid reg 5(1).
- 10 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.
- 11 Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 5(2)(a).
- 12 Ie under ibid reg 5(1)(e)-(g): reg 5(2)(b). See the text to notes 6-8 supra.
- 13 Ibid reg 5(2)(b).
- 14 Ie under ibid reg 5(1)(f), (g): reg 5(2)(c). See the text to notes 7-8 supra.
- 15 Ibid reg 5(2)(c).
- 16 Ibid reg 5(2)(d).
- 17 Ibid reg 5(2)(e).
- 18 Ibid reg 5(2)(f). For the meaning of 'substance' and 'article' see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302.
- 19 Ibid reg 5(2)(g).
- 20 Ibid reg 5(3).
- 21 Ibid reg 5(4).
- 22 Ibid reg 5(5).
- 23 Ibid reg 5(6).
- 24 Ibid reg 5(6)(a).
- 25 Ibid reg 5(6)(b).
- 26 Ibid reg 5(6)(c).
- 27 Ibid reg 5(7).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

**96-110 Fire certificate required for specified premises ... Existing certificates deemed to have been issued for specified premises**

SI 1976/2003 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/D. SPECIFIED PREMISES/100. Proposed changes by the responsible person.

### **100. Proposed changes by the responsible person.**

Before commencing to make any material change which will affect any of the matters specified or referred to in a fire certificate<sup>1</sup> which is in force, the responsible person<sup>2</sup> must notify the Health and Safety Executive<sup>3</sup> in writing of his proposals<sup>4</sup>. The provisions for furnishing plans of the premises to be covered by the certificate and for furnishing plans of adjoining premises<sup>5</sup> apply to that notice as they apply to an application for a fire certificate<sup>6</sup>.

If the Executive is satisfied that if the proposed change were made all the safety provisions set out in the certificate<sup>7</sup> would still be adequate, then, on production of the fire certificate, it must either cause a copy of the notice to be attached to the certificate, together with a statement that it is so satisfied, or it may vary the certificate or cancel it and issue a new one<sup>8</sup>.

If the Executive is satisfied that if the change were made any of those provisions would be inadequate it must (1) inform the responsible person of that fact and of the steps which would have to be taken to prevent their becoming inadequate in the event of the change being made<sup>9</sup>; and (2) notify him that the fire certificate will be cancelled if the change is made without those steps being taken<sup>10</sup>. Moreover, where a notice has been given under head (2) above the Executive may cancel the certificate if the change is made without the steps referred to in head (1) above having been taken<sup>11</sup>; and where steps are taken the Executive may vary the certificate or cancel it and issue a new one<sup>12</sup>.

1 For the meaning of 'fire certificate' see PARA 96 note 1 ante.

2 For the meaning of 'responsible person' see PARA 98 note 2 ante.

3 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

4 Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 6(1).

5 I.e. the provisions of *ibid* reg 4(2)(a), (b) (see PARA 98 text to notes 5-6 ante); reg 6(2). For the meaning of 'premises' see PARA 96 note 2 ante.

6 *Ibid* reg 6(2). As to application for and issue of a fire certificate see PARA 98 ante.

7 I.e. the matters mentioned in *ibid* reg 5(1)(d)-(g) (see PARA 99 heads (2)-(7) ante), and reg 5(2) (see PARA 99 heads (a)-(g) ante); reg 6(3).

8 *Ibid* reg 6(3).

9 *Ibid* reg 6(4)(a).

10 *Ibid* reg 6(4)(b).

11 *Ibid* reg 6(5).

12 *Ibid* reg 6(5).

### **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

**96-110 Fire certificate required for specified premises ... Existing certificates deemed to have been issued for specified premises**

SI 1976/2003 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/D. SPECIFIED PREMISES/101. Changes by persons other than responsible persons.

### **101. Changes by persons other than responsible persons.**

Where the responsible person<sup>1</sup> becomes aware that some other person proposes to make or has made any material change which affects any of the provisions specified or referred to in a fire certificate<sup>2</sup> which is in force, the responsible person must notify the Health and Safety Executive<sup>3</sup> in writing of the proposal or change as the case may be<sup>4</sup>. The provisions for furnishing plans of the premises to be covered by the certificate and for furnishing plans of adjoining premises<sup>5</sup> apply to that notice as they apply to an application for a fire certificate<sup>6</sup>.

If the Executive is satisfied that notwithstanding the change all the safety provisions set out in the certificate<sup>7</sup> would still be adequate, then, on production of the fire certificate, it must either cause a copy of the notice to be attached to the certificate with a statement that it is so satisfied, or it may vary the certificate or cancel it and issue a new one<sup>8</sup>.

If the Executive is satisfied that any of those provisions would become inadequate if the proposed change were made, or if where the change has been made it is satisfied that any of those provisions have become inadequate, it must (1) inform the responsible person of that fact and of the steps which would have to be taken to prevent their becoming or, as the case may be, remaining inadequate<sup>9</sup>; and (2) notify him that the fire certificate will be cancelled if those steps are not taken within such time as may be specified in the notice<sup>10</sup>.

Where a notice has been given under head (2) above the Executive may cancel the certificate if the steps are not taken within the time specified in the notice, or within such further time as may be allowed by the Executive or by any order made on, or in proceedings arising out of, an appeal<sup>11</sup> against the notice; where the steps are taken the Executive may vary the certificate or may cancel it and issue a new one<sup>12</sup>.

1 For the meaning of 'responsible person' see PARA 98 note 2 ante.

2 For the meaning of 'fire certificate' see PARA 96 note 1 ante.

3 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

4 Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 7(1).

5 Ie the provisions of ibid reg 4(2)(a), (b) (see PARA 98 text to notes 5-6 ante): reg 7(2). For the meaning of 'premises' see PARA 96 note 2 ante.

6 Ibid reg 7(2). As to application for and issue of a fire certificate see PARA 98 ante.

7 Ie the matters mentioned in ibid reg 5(1)(d)-(g) (see PARA 99 heads (2)-(7) ante), and reg 5(2) (see PARA 99 text to notes 10-19 ante): reg 7(3).

8 Ibid reg 7(3).

9 Ibid reg 7(4)(a).

10 Ibid reg 7(4)(b).

11 Ie an appeal under ibid reg 12 (see PARA 106 post): reg 7(5).

12 Ibid reg 7(5).

### **UPDATE**

## **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

## **96-110 Fire certificate required for specified premises ... Existing certificates deemed to have been issued for specified premises**

SI 1976/2003 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.



Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/D. SPECIFIED PREMISES/102. Other cases where fire certificate becomes inadequate.

## **102. Other cases where fire certificate becomes inadequate.**

If the Health and Safety Executive<sup>1</sup> considers that a fire certificate<sup>2</sup> should be varied or cancelled because any of the safety provisions set out in it<sup>3</sup> is or has become inadequate, the Executive must (1) inform any person to whom the certificate or a copy of it was given<sup>4</sup> of that fact and the steps, if any, which would have to be taken for those provisions to become adequate<sup>5</sup>; and (2) notify him that it will cancel the certificate unless those steps are taken within such time as may be specified in the notice, and, if at the end of that time or such further time as may be allowed by the Executive or by any order made on, or in proceedings arising out of, an appeal<sup>6</sup> against the notice, those steps have been taken the Executive may vary the certificate accordingly, and if they have not been taken may, subject to that order, cancel it<sup>7</sup>.

1 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 For the meaning of 'fire certificate' see PARA 96 note 1 ante.

3 I.e. the provisions of the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 5(1)(d)-(g) (see PARA 99 heads (2)-(7) ante), and reg 5(2) (see PARA 99 text to notes 10-19 ante): reg 8.

4 I.e. under ibid reg 5(4) (see PARA 99 text to note 21 ante): reg 8(a).

5 Ibid reg 8(a).

6 I.e. an appeal under ibid reg 12 (see PARA 106 post): reg 8(b).

7 Ibid reg 8(b).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **96-110 Fire certificate required for specified premises ... Existing certificates deemed to have been issued for specified premises**

SI 1976/2003 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/D. SPECIFIED PREMISES/103. Applications for variation of fire certificate.

### **103. Applications for variation of fire certificate.**

Where a fire certificate<sup>1</sup> is in force, the responsible person<sup>2</sup> may apply to the Health and Safety Executive<sup>3</sup> for the certificate to be varied<sup>4</sup>. The application must state the grounds on which it is made, and the provisions for providing plans<sup>5</sup> apply to any such application<sup>6</sup>.

If the Executive is satisfied that the variation should be made it must vary the certificate accordingly or may cancel it and issue a new one<sup>7</sup>. If it is not so satisfied it must notify the responsible person that it refuses to vary the certificate<sup>8</sup>.

- 1 For the meaning of 'fire certificate' see PARA 96 note 1 ante.
- 2 For the meaning of 'responsible person' see PARA 98 note 2 ante.
- 3 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.
- 4 Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 9(1).
- 5 Ie the provisions of ibid reg 4(2) (see PARA 98 text to notes 5-7 ante): reg 9(1).
- 6 See ibid reg 9(1).
- 7 Ibid reg 9(2).
- 8 Ibid reg 9(2).

### **UPDATE**

#### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

#### **96-110 Fire certificate required for specified premises ... Existing certificates deemed to have been issued for specified premises**

SI 1976/2003 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/D. SPECIFIED PREMISES/104. Change of responsible person.

#### **104. Change of responsible person.**

Where a fire certificate<sup>1</sup> is in force in respect of any premises<sup>2</sup> and a person becomes the responsible person<sup>3</sup> in respect of those premises he must notify the Health and Safety Executive<sup>4</sup>, and the Executive must vary the certificate accordingly<sup>5</sup>.

- 1 For the meaning of 'fire certificate' see PARA 96 note 1 ante.
- 2 For the meaning of 'premises' see PARA 96 note 2 ante.
- 3 For the meaning of 'responsible person' see PARA 98 note 2 ante.
- 4 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.
- 5 Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 10.

#### **UPDATE**

#### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

#### **96-110 Fire certificate required for specified premises ... Existing certificates deemed to have been issued for specified premises**

SI 1976/2003 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/D. SPECIFIED PREMISES/105. Prohibition on persons working on specified premises without fire certificate.

### **105. Prohibition on persons working on specified premises without fire certificate.**

A responsible person<sup>1</sup> must not work or permit any other person to work on any premises<sup>2</sup> for which a fire certificate is required<sup>3</sup> unless (1) a certificate is in force and any conditions<sup>4</sup> attached to it are being complied with; or (2) an application has been made for a certificate<sup>5</sup> and it has not been refused or withdrawn<sup>6</sup>.

This requirement<sup>7</sup> does not apply, however, where the work is solely for the purpose of (a) taking certain steps<sup>8</sup>; (b) complying with certain conditions<sup>9</sup>; or (c) otherwise making the premises safe<sup>10</sup>.

1 For the meaning of 'responsible person' see PARA 98 note 2 ante.

2 For the meaning of 'premises' see PARA 96 note 2 ante.

3 For the meaning of 'fire certificate' see PARA 91 note 1 ante. As to the requirement of fire certificates for specified premises see PARA 96 ante. As to specified premises see PARA 97 ante.

4 As to the conditions which may be imposed in a fire certificate see PARA 99 ante.

5 As to the application for and issue of a fire certificate for specified premises see PARA 98 ante.

6 Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 11(1).

7 *Ibid* reg 11(1): see the text and notes 1-5 *supra*.

8 *Ibid* 11(2)(a). The reference in the text to certain steps is to the steps required under *ibid* reg 4(4) (see PARA 98 text to notes 14-17 ante), reg 6(4) (see PARA 100 text to notes 9-10 ante), reg 7(4) (see PARA 101 text to notes 9-10 ante), or reg 8 (see PARA 102 ante): reg 11(2)(a).

9 *Ibid* 11(2)(b). The reference in the text to certain conditions is to those imposed under *ibid* reg 5(2) (see PARA 99 text to notes 10-19 ante): reg 11(2)(b).

10 *Ibid* reg 11(2)(c).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **96-110 Fire certificate required for specified premises ... Existing certificates deemed to have been issued for specified premises**

SI 1976/2003 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/D. SPECIFIED PREMISES/106. Appeals.

## **106. Appeals.**

A person who is aggrieved<sup>1</sup> by (1) anything mentioned in a notice<sup>2</sup> as a step which would have to be taken as a condition of the issue of a fire certificate<sup>3</sup>, or the period allowed by that notice for the taking of any steps mentioned in it<sup>4</sup>; (2) a refusal to issue a fire certificate<sup>5</sup>; (3) the inclusion of anything in, or the omission of anything from, a fire certificate<sup>6</sup>; (4) a refusal to vary a fire certificate<sup>7</sup>; or (5) anything mentioned in a notice served with respect to any premises as a step which must be taken if the Health and Safety Executive<sup>8</sup> is not to become entitled to cancel the fire certificate relating to the premises<sup>9</sup>, may within 21 days from the relevant date<sup>10</sup>, appeal to a court in accordance with the following provisions, and on that appeal the court may make such order as it thinks fit<sup>11</sup>.

An appeal must be brought by way of complaint to a magistrates' court for an order<sup>12</sup>. The Executive and any other person aggrieved by an order made by a magistrates' court on a complaint may appeal from it to the Crown Court<sup>13</sup>.

In any proceedings for an offence of contravening the prohibition on persons working on specified premises<sup>14</sup> unless a fire certificate is in force<sup>15</sup> or a requirement of, or condition contained in, a fire certificate at any time during the period between the relevant date and the final determination of an appeal, it is a defence that the appeal was brought and had not been determined<sup>16</sup>.

1 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

2 I.e. a notice served under the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 4(4) (see PARA 98 text to notes 14-17 ante): reg 12(1)(a).

3 For the meaning of 'fire certificate' see PARA 96 note 1 ante.

4 Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 12(1)(a).

5 Ibid reg 12(1)(b). As to a refusal to issue a fire certificate see PARA 98 ante.

6 Ibid reg 12(1)(c). As to what must be included in a fire certificate see PARA 99 ante.

7 Ibid reg 12(1)(d). As to the variation of a fire certificate see PARAS 100-103 ante.

8 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

9 I.e. a notice served under the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 6(4) (see PARA 100 text to notes 9-10 ante), reg 7(4) (see PARA 101 text to notes 9-10 ante), or reg 8 (see PARA 102 ante): reg 12(1)(e).

10 'Relevant date' means (1) in the case of a person who was given notice in accordance with the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003 (as amended), of the matter by which he is aggrieved, the date on which he was served with that notice (and for this purpose the date on which a certificate was issued or an application deemed to have been refused is to be treated as a date on which the applicant was served with a notice) (reg 12(2)(a)); (2) in the case of any other person, the date on which the relevant notice, or amended notice, as the case may be, was posted under reg 5(6) (see PARA 99 text to notes 23-26 ante) (reg 12(2)(b)).

11 Ibid reg 12(1).

12 Ibid reg 11(4). The Magistrates' Courts Act 1980 (see MAGISTRATES) applies to the proceedings: Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 12(4). As to the construction of enactments when re-enacted see PARA 97 note 3 ante.

13 Ibid reg 12(5).

14 As to specified premises see PARA 97 ante.

15 Ie the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 11 (see PARA 105 ante): reg 12(3).

16 Ibid reg 12(3).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **96-110 Fire certificate required for specified premises ... Existing certificates deemed to have been issued for specified premises**

SI 1976/2003 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/D. SPECIFIED PREMISES/107. Modification of local Acts.

### **107. Modification of local Acts.**

Local Acts passed before or in the same session as the Health and Safety at Work etc Act 1974 have effect subject to the modification that a person required by or under any local Act to do anything in relation to any premises is not to be treated as having acted in contravention of that local Act by reason of his failure to do that thing in so far as the failure is attributable to the fact that remedying it would involve a contravention of regulations relating to fire certificates<sup>1</sup> for the specified premises<sup>2</sup>.

<sup>1</sup> For the meaning of 'fire certificate' see PARA 96 note 1 ante.

<sup>2</sup> I.e. the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 13. As to specified premises see PARA 97 ante.

### **UPDATE**

#### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

#### **96-110 Fire certificate required for specified premises ... Existing certificates deemed to have been issued for specified premises**

SI 1976/2003 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.



Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/D. SPECIFIED PREMISES/108. County court's power to modify agreements and apportion expenses.

### **108. County court's power to modify agreements and apportion expenses.**

A person who, by reason of the terms of any agreement or lease relating to any premises to which the regulations relating to fire certificates for specified premises<sup>1</sup> apply, is prevented from carrying out or doing any structural or other alteration or other thing the carrying out or doing of which is requisite in order to secure compliance with a provision of those regulations, or with a notice served under certain of those regulations<sup>2</sup>, or with a certain condition imposed under the regulations<sup>3</sup>, may apply to the county court within whose jurisdiction the premises are situated, and the court may make such an order setting aside or modifying any terms of the agreement or lease as it considers just and equitable in the circumstances of the case<sup>4</sup>.

Where the carrying out or doing on any of those premises of any structural or other alterations or other thing (the carrying out or doing of which is requisite<sup>5</sup>) involves a person having an interest in the premises in expense, or increased expense, and he alleges that the whole or part of the expense or, as the case may be, the increase ought to be borne by some other person having an interest in the premises, the first-mentioned person may apply to the county court within whose jurisdiction the premises are situated and the court, having regard to the terms of any agreement or lease relating to the premises, may by order give such directions with respect to the persons by whom the expense or increase is to be borne and in what proportions it is to be borne by them and, if need be, for modification of the terms of that agreement or lease (so far as concerns rent payable in respect of the premises) as the court considers just and equitable in the circumstances of the case<sup>6</sup>.

1    Ie the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003 (as amended). As to specified premises see PARA 97 ante.

2    Ie a notice served under *ibid* reg 4(4) (see PARA 98 text to notes 14-17 ante), reg 6(4) (see PARA 100 text to notes 9-10 ante), reg 7(4) (see PARA 101 text to notes 9-10 ante), or reg 8 (see PARA 102 ante): reg 14(1).

3    Ie a condition imposed under *ibid* reg 5(2) (see PARA 99 text to notes 10-19 ante): reg 14(1).

4    *Ibid* reg 14(1). The application to the county court should be by issue of a claim form in accordance with CPR 7.2. As from 26 April 1999, the Civil Procedure Rules (CPR) replace the Rules of the Supreme Court and the County Court Rules. Certain provisions of the RSC and CCR are saved in a modified form in CPR Schs 1 and 2 respectively. The CPR apply to proceedings issued on or after 26 April 1999, and new steps taken in existing proceedings, as prescribed: CPR Pt 51; *Practice Direction--Transitional Arrangements* (1999) PD 51. As to court procedure generally see CIVIL PROCEDURE.

5    Ie as mentioned in the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 14(1): see the text and notes 1-4 *supra*.

6    *Ibid* reg 14(2). See also note 4 *supra*.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements

mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

**96-110 Fire certificate required for specified premises ... Existing certificates deemed to have been issued for specified premises**

SI 1976/2003 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/D. SPECIFIED PREMISES/109. Exemptions.

### **109. Exemptions.**

Where the Health and Safety Executive<sup>1</sup> is satisfied in respect of any particular premises or part of them, or in respect of any description of premises, that certain requirements of the regulations relating to fire certificates for specified premises<sup>2</sup> are inappropriate or are not reasonably practicable<sup>3</sup>, it may by written certificate (which it may in its discretion revoke) exempt those premises or that part of them or that description of premises from those requirements to such extent and subject to such conditions as may be specified in the certificate<sup>4</sup>.

An inspector<sup>5</sup> is exempt from the requirements of the Health and Safety at Work etc Act 1974 which require an inspector to consult the fire authority<sup>6</sup> before serving certain improvement and prohibition notices<sup>7</sup> in relation to any notice in connection with any premises in respect of which a fire certificate is required under the regulations made under that Act relating to fire certificates for specified premises<sup>8</sup>.

1 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

2 I.e. the requirements of the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, regs 3-11: see PARAS 96-105 ante. As to specified premises see PARA 97 ante.

3 As to the meaning of 'reasonably practicable' see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 417.

4 Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 15(1).

5 For the meaning of 'inspector' see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375.

6 For the meaning of 'fire authority' see PARA 17 ante.

7 I.e. the requirements of the Health and Safety at Work etc Act 1974 s 23(4) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 377): Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 15(2). As to the construction of enactments when amended see PARA 97 note 3 ante.

8 Ibid reg 15(2).

### **UPDATE**

#### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

#### **96-110 Fire certificate required for specified premises ... Existing certificates deemed to have been issued for specified premises**

SI 1976/2003 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(i) When Fire Certificate Needed/D. SPECIFIED PREMISES/110. Existing certificates deemed to have been issued for specified premises.

### **110. Existing certificates deemed to have been issued for specified premises.**

Where, immediately before a fire certificate<sup>1</sup> becomes required in respect of any premises under the regulations relating to fire certificates for specified premises<sup>2</sup>, a fire certificate issued under the Fire Precautions Act 1971 (called the 'Fire Precautions Act certificate')<sup>3</sup> was in force in respect of those premises, the Fire Precautions Act certificate is deemed to be a fire certificate issued under those regulations and accordingly any condition attached to the Fire Precautions Act certificate has effect as a condition imposed under the regulations<sup>4</sup> and the certificate may (in particular) be varied<sup>5</sup> or cancelled<sup>6</sup> in accordance with those regulations<sup>7</sup>.

Where on 1 January 1977<sup>8</sup> a fire certificate became required in respect of any premises under the regulations<sup>9</sup> and immediately prior to that date an existing certificate<sup>10</sup> was in force in respect of those premises, the existing certificate continues in force<sup>11</sup> and (1) as from that date the existing certificate is deemed to be a fire certificate issued under those regulations and any condition attached to it has effect as a condition imposed under one of those regulations<sup>12</sup>; and (2) the existing certificate may (in particular) be varied or cancelled in accordance with those regulations<sup>13</sup>. Nevertheless, the existing certificate, so having effect<sup>14</sup>, is treated as imposing in relation to the premises the same requirements as immediately prior to that date were imposed in relation to it by certain statutory enactments relating to factories or offices, shops and railway premises<sup>15</sup> now repealed<sup>16</sup>.

If any notice has been given to the appropriate authority of a proposal to undertake any of the changes of which notice was required to be given by a statutory enactment relating to factories, or offices, shops and railway premises, which has been repealed<sup>17</sup>, that notice is deemed to be a notice duly given in accordance with the regulations relating to fire certificates for special premises<sup>18</sup> and accordingly certain of those provisions dealing with changes by the responsible person<sup>19</sup> affecting the adequacy of provisions specified in a fire certificate<sup>20</sup> apply<sup>21</sup>.

1 For the meaning of 'fire certificate' see PARA 96 note 1 ante.

2 I.e. the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003 (as amended) (see PARA 96 ante): reg 16. As to specified premises see PARA 97 ante.

3 As to the requirement of fire certificates under the Fire Precautions Act 1971 see PARAS 83-95 ante.

4 I.e. a condition imposed under the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 5(2) (see PARA 99 text to notes 10-19 ante): reg 16.

5 As to variation of fire certificates see PARAS 100-103 ante.

6 As to cancellation of fire certificates see the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 6(5) (see PARA 100 text to notes 11-12 ante), reg 7(5) (see PARA 101 text to notes 11-12 ante), and reg 8 (see PARA 102 ante).

7 Ibid reg 16.

8 I.e. the date of the coming into operation of the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003: see reg 1.

9 I.e. the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003 (as amended): see PARA 96 ante.

10 'Existing certificate' means a Factories Act certificate or an Office Act certificate; 'Factories Act certificate' means a certificate under the Factories Act 1961 s 40 (repealed); and 'Office Act certificate' means a certificate under the Offices, Shops and Railway Premises Act 1963 s 29 (repealed): Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 17(1). As to the Factories Act 1961 and the Offices, Shops and Railway Premises Act 1963 see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 306-333.

11 Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 17(2). The certificate continues in force notwithstanding the repeal of the section under which it was issued: reg 17(2).

12 Ie a condition imposed under *ibid* reg 5(2) (see PARA 99 text to notes 10-19 ante): reg 17(1), (2)(a).

13 *Ibid* reg 17(1), (2)(b).

14 Ie by virtue of *ibid* reg 17(2): see the text and notes 8-13 supra.

15 Ie the Factories Act 1961 ss 41(1), (3), 48 (except s 48(5), (8), (9)), ss 49(1), 51(1), 52(1), (4) (all repealed); or the Offices, Shops and Railway Premises Act 1963 ss 30(1), (3), 33, 34(1), (2), 36(1), 38(1) (all repealed): Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 17(3)(a), (b).

16 *Ibid* reg 17(3).

17 Ie the Factories Act 1961 s 41(3) (repealed); or the Offices, Shops and Railway Premises Act 1963 s 30(3) (repealed): Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 17(5).

18 Ie *ibid* reg 6(1): see PARA 100 text to notes 1-4 ante.

19 For the meaning of 'responsible person' see PARA 98 note 2 ante.

20 Ie the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003, reg 6(2)-(4): see PARA 100 text to notes 5-10 ante.

21 *Ibid* reg 17(5).

## UPDATE

### 81-149 Fire Precautions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 96-110 Fire certificate required for specified premises ... Existing certificates deemed to have been issued for specified premises

SI 1976/2003 replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

### 110 Existing certificates deemed to have been issued for specified premises

TEXT AND NOTE 3--1971 Act replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(ii) Fire Certificates/111. Contents of fire certificate.

## (ii) Fire Certificates

### 111. Contents of fire certificate.

Every fire certificate issued with respect to any premises<sup>1</sup> must specify: (1) the particular use or uses of the premises which the certificate covers<sup>2</sup>; (2) the means of escape<sup>3</sup> in case of fire for which the premises are provided<sup>4</sup>; (3) the means, other than means for fighting fire, with which the relevant building is provided, for securing that the means of escape with which the premises are provided can be safely and effectively used at all material times<sup>5</sup>; (4) the type, number and location of the means for fighting fire, whether in the premises or affecting the means of escape, with which the relevant building is provided<sup>6</sup>; and (5) the type, number and location of the means with which the relevant building is provided for giving to persons in the premises warning in case of fire<sup>7</sup>, and may, where appropriate, do so by means of or by reference to a plan<sup>8</sup>. In relation to factory premises<sup>9</sup>, every fire certificate issued with respect to those premises must also specify particulars as to any explosive or highly flammable materials which may be stored or used in the premises<sup>10</sup>. For the purposes of the Fire Prevention Act 1971, a fire certificate issued with respect to any premises is treated as requiring every matter specified in the certificate<sup>11</sup> to be kept in accordance with its specification in the certificate, and references to requirements imposed by a fire certificate are to be construed accordingly<sup>12</sup>.

A fire certificate issued with respect to any premises may impose such requirements as the fire authority<sup>13</sup> considers appropriate in the circumstances<sup>14</sup>:

- 97 (a) for securing that the means of escape in case of fire with which the premises are provided are properly maintained and kept free from obstruction<sup>15</sup>;
- 98 (b) for securing that the means for escape, for fighting fires and of giving warning in case of fire<sup>16</sup> are properly maintained<sup>17</sup>;
- 99 (c) for securing that persons employed to work in the premises receive appropriate instruction or training in what to do in case of fire, and that records are kept of instruction or training given for that purpose<sup>18</sup>;
- 100 (d) for limiting the number of persons who may be in the premises at any one time<sup>19</sup>; and
- 101 (e) as to other precautions to be observed in the relevant building<sup>20</sup> in relation to the risk, in case of fire, to persons in the premises<sup>21</sup>.

Any requirements imposed by a fire certificate issued with respect to any premises may, in so far as they apply to the premises, be framed either so as to apply to the whole of the premises or so as to apply to one or more parts of them<sup>22</sup>; and where the premises do not constitute the whole of the relevant building, may (where appropriate) be framed either so as to apply to the whole of the rest of that building or so as to apply to one or more parts of the rest of it<sup>23</sup>. Different requirements may, in either case, be imposed in relation to different parts; and a fire certificate covering more than one use of the premises to which it relates may<sup>24</sup> impose different requirements in relation to different uses of the premises or any part of the premises<sup>25</sup>.

If, while a fire certificate is in force in respect of any premises, any requirement imposed by it is contravened<sup>26</sup> by reason of anything done or not done to or in relation to any part of the relevant building, every person who is responsible for that contravention<sup>27</sup> is guilty of an offence<sup>28</sup>. In so far as a requirement imposed by a fire certificate issued with respect to any

premises requires anything to be done or not to be done to or in relation to any part of the relevant building, the person responsible for any contravention of it is (subject to any provision included in the certificate<sup>29</sup>) the occupier of that part, but if as regards any such requirement, in so far as it requires anything to be done or not to be done to or in relation to any part of the relevant building, the fire authority considers it appropriate in the circumstances to provide that some other person or persons should be responsible for any such contravention instead of, or in addition to, the occupier<sup>30</sup> of that part, it may so provide in the certificate and, if the certificate covers more than one use of the premises, may make different provision in it in relation to different uses of the premises<sup>31</sup>.

A person aggrieved<sup>32</sup> by the inclusion of anything in, or the omission of anything from a fire certificate may appeal to the court and is not liable for contravention occurring between the date on which the inclusion or omission was first made known to him and the final determination of the appeal<sup>33</sup>.

Where any enactment provides for the licensing of premises of any class or description<sup>34</sup> and the authority responsible for issuing licences under it is required or authorised to impose terms, conditions or restrictions in connection with the issue of such licences, then, in the case of any premises of that class or description so long as there is in force with respect to the premises a fire certificate covering the use of the premises by reason of which a licence under that enactment is required, any term, condition or restriction imposed in connection with the issue under that enactment of any licence with respect to those premises is to have no effect in so far as it relates to any matter in relation to which requirements are or could be imposed by that certificate<sup>35</sup>.

1 For the meaning of 'premises' see PARA 82 ante. As to the necessity for a fire certificate see PARA 83 ante.

2 Fire Precautions Act 1971 s 6(1)(a). See also note 8 infra. Section 6 (as amended) applies to Crown premises: see s 40(1).

3 For the meaning of 'escape' see PARA 87 note 6 ante. As to the duty as to means of escape see PARA 88 ante.

4 Fire Precautions Act 1971 s 6(1)(b).

5 Ibid s 6(1)(c). 'Relevant building', in relation to any premises with respect to which a fire certificate is in force, means the building constituting or comprising the premises in question: see s 43(1).

6 Ibid s 6(1)(d) (amended by the Fire Safety and Safety of Places of Sport Act 1987 ss 15, 49(1), Sch 4).

7 Fire Precautions Act 1971 s 6(1)(e).

8 Ibid s 6(1). A fire certificate issued with respect to any premises, other than premises to which a notice under s 3 (see PARA 92 ante) is in force, must be sent to the occupier of the premises and kept in the premises as long as it is in force: s 6(8). Where the premises in which a fire certificate is required are factory premises, office premises, railway premises or shop premises and (1) are held under a lease or agreement for a lease or under a licence and consist of part of a building all parts of which are in the same ownership; or (2) consist of part of a building in which different parts are owned by different persons, a copy of the fire certificate issued with respect to any premises other than premises in relation to which a notice under s 3 is in force must be sent to the occupier of the premises and must be kept in the premises so long as it is in force and the fire certificate must be sent to the owner of the building or, as the case may be, the person who owns the part of the building of which the premises consist: s 6(8) (modified by s 28A, Sch 2 Pt II para 3(1), (4) (s 28A and Sch 2 both added by the Fire Safety and Safety of Places of Sport Act 1987 s 16, Sch 1)). In the event of a contravention of the Fire Precautions Act 1971 s 6(8) the occupier of the premises is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 7(6). For the meaning of 'contravention' see PARA 89 note 13 ante. As to the standard scale see PARA 7 note 1 ante.

9 As to factory premises, office premises, railway premises or shop premises see PARA 83 note 16 ante.

10 Fire Precautions Act 1971 s 6(1)(f) (added by Sch 2 Pt II para 4 (as added: see note 8 supra)).

11 In accordance with ibid s 6(1)(b), (c), (d) (as amended) or (e): see the text and notes 4-6 supra.



12 Ibid s 6(4). References in the Fire Precautions Act 1971 to requirements imposed by a fire certificate are to be construed accordingly: s 6(4).

13 For the meaning of 'fire authority' see PARA 17 ante.

14 Fire Precautions Act 1971 s 6(2). Where there are in force any regulations under s 12 (as amended) (see PARAS 119-121 post), applying to premises put to a particular use or to any specified class of such premises, these additional requirements must not be more onerous than the requirements of any such regulations as make provision about the same matter: see s 12(7)(b); and PARA 121 post.

15 Ibid s 6(2)(a).

16 Ie as mentioned in ibid s 6(1)(c), (d) (as amended), (e): see the text and notes 4-6 supra.

17 See ibid s 6(2)(b).

18 Ibid s 6(2)(c).

19 Ibid s 6(2)(d).

20 For the meaning of 'relevant building' see note 5 supra.

21 Fire Precautions Act 1971 s 6(2)(e).

22 Ibid s 6(3)(a).

23 Ibid s 6(3)(b).

24 Ie by virtue of ibid s 6(2): see the text and notes 14-21 supra.

25 Ibid s 6(3).

26 For the meaning of 'contravened' see PARA 89 note 13 ante.

27 Ie by virtue of the Fire Precautions Act 1971 s 6(5): see the text and notes 29-31 infra.

28 Ibid s 7(4). A person guilty of an offence is liable on summary conviction to a fine not exceeding the prescribed sum; and on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or both: s 7(5) (amended by the Magistrates Court Act 1980 s 32(2)). As to the prescribed sum see PARA 57 note 4 ante. A person, other than the occupier of the premises, is not to be convicted of an offence under the Fire Precautions Act 1971 s 7(4) unless it is proved that his responsibility for contraventions of the requirement in question had been made known to him before the occurrence of the contravention in respect of which he is charged: s 7(4) proviso (amended by the Fire Safety and Safety of Places of Sport Act 1987 ss 8(3), (4), (14)). See also note 31 infra.

29 Ie in pursuance of the Fire Precautions Act 1971 s 6(5): see the text and note 31 infra. For the meaning of 'contravention' see PARA 89 note 13 ante.

30 Where the premises in which a fire certificate is required are factory premises, office premises, railway premises or shop premises and (1) are held under a lease or agreement for a lease or under a licence and consist of part of a building all parts of which are in the same ownership; or (2) consist of part of a building in which different parts are owned by different persons, for references to the 'occupier' in ibid ss 6(5), 7(4) (as amended) there is substituted, in the case of premises falling within head (1) supra, references to the owner of the building and, in the case of premises falling within head (2) supra, references to the persons who between them own the building: Sch 2 Pt II para 3(1), (2), (3) (as added: see note 8 supra).

31 See ibid s 6(5). A fire authority must not issue a fire certificate which would have the effect of making a person responsible under or by virtue of s 6(5) for contraventions of a requirement imposed by the certificate, or make in a fire certificate any amendment which would have that effect, unless (in either case) it has previously consulted the person in question about his proposed responsibility for contraventions of the requirement; and must not amend a fire certificate so as to vary any requirement imposed by it, in a case where any person already responsible under or by virtue of s 6(5) for contraventions of that requirement is to continue to be so responsible when the variation takes effect, unless it has previously consulted that person about the proposed variation; but, without prejudice to any right of appeal conferred by s 9 (see PARA 116 post), a fire certificate is not invalidated by any failure of the fire authority by whom it is issued to comply with these requirements: s 6(6). Where a fire authority proposes to issue a new fire certificate with respect to any premises as an alternative to amending an existing fire certificate, and the new certificate would have the

effect of reimposing without variation a requirement imposed by the existing certificate and of making any person who is responsible under or by virtue of s 6(5) for contraventions of the existing requirement continue to be so responsible for contraventions of it as reimposed, the authority is not required under s 6(6) to consult that person by reason only of that fact: s 6(7). See *DTZ Debenham Thorpe Ltd v Shropshire County Council* [1998] EHLR 93, DC (agent under contractual duty to ensure premises complied with fire certificate also had power to prevent any interference with that duty).

32 As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

33 See the Fire Precautions Act 1971 s 9(1)(c), (5); and PARA 116 post. For the meaning of 'the court' see PARA 91 note 2 ante. As to appeals see PARA 116 post.

34 See eg the Theatres Act 1968 s 12; the Sunday Theatre Act 1972 ss 1, 2 (as amended), 3; and LICENSING AND GAMBLING vol 67 (2008) PARA 53 et seq.

35 Fire Precautions Act 1971 s 31(1)(a). Section 31 does not apply to any premises occupied by the United Kingdom Atomic Energy Authority: s 41. As to the United Kingdom Atomic Energy Authority see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1363 et seq. Where a licence issued under the Explosives Act 1875 (see EXPLOSIVES) or the Petroleum (Consolidation) Act 1928 (see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1625) is in force with respect to factory premises, office premises, shop premises or railway premises, the Fire Precautions Act 1971 s 31 does not have effect in relation to any term, condition or restriction imposed in connection with the issue, renewal, transfer or variation of such licence: Sch 2 Pt II para 7 (as added: see note 8 supra).

## UPDATE

### 81-149 Fire Precautions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 111-122 Contents of fire certificate ... Effect of modifications

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(ii) Fire Certificates/112. Change of conditions relevant to fire certificate.

**112. Change of conditions relevant to fire certificate.**

So long as a fire certificate is in force with respect to any premises<sup>1</sup>, the fire authority<sup>2</sup> may cause any part of the relevant building<sup>3</sup> to be inspected at any reasonable time for the purpose of ascertaining whether there has been a change of conditions by reason of which any specified matters<sup>4</sup> have become inadequate in relation to any use of the premises covered by the certificate; but where a building or part of a building is used as a dwelling or consists of premises of any other description<sup>5</sup>, an inspection of the building or, as the case may be, of such a part is not to be made as of right unless 24 hours' notice has been given to the occupier<sup>6</sup> of the building or, as the case may be, of the part in question<sup>7</sup>.

If, while a fire certificate is in force with respect to any premises:

- 102 (1) it is proposed to make a material extension of, or material structural alteration to, the premises<sup>8</sup>; or
- 103 (2) it is proposed to make a material alteration in the internal arrangement of the premises or in the furniture<sup>9</sup> or equipment with which the premises are provided<sup>10</sup>; or
- 104 (3) the occupier of the premises proposes to begin to keep explosive or highly flammable materials of any prescribed kind anywhere under, in or on the relevant building in a quantity or aggregate quantity greater than the quantity prescribed<sup>11</sup> as the maximum in relation to materials of that kind<sup>12</sup>, or, in relation to factory premises the occupier of the premises proposes to begin to store or use explosive or highly flammable materials in the premises or materially to increase the extent of such storage or use,

the occupier must, before the carrying out of the proposals is begun, give notice of the proposals to the fire authority; and if the carrying out of the proposals is begun without such notice having been given, the occupier is guilty of an offence<sup>13</sup>.

If, while a fire certificate is in force with respect to any premises not constituting the whole of the relevant building, any person who, as occupier of any other part of that building, is responsible<sup>14</sup> for contraventions of any requirement imposed by the certificate, proposes to begin to keep explosive or highly flammable materials of any prescribed kind, or in the case of factory premises to store or use explosive or highly flammable materials in the premises or materially to increase the extent of such storage or use, anywhere under, in or on that building in a quantity or aggregate quantity greater than the quantity prescribed<sup>15</sup> as the maximum in relation to materials of that kind, that person must, before the carrying out of the proposals is begun, give notice of the proposals to the fire authority; and if the carrying out of the proposals is begun without such notice having been given, that person is guilty of an offence<sup>16</sup>.

If any person contravenes a direction given to him<sup>17</sup>, he is guilty of an offence<sup>18</sup>; and the fire authority may cancel the fire certificate issued with respect to any premises if it is satisfied that there has been such a contravention by the occupier, whether or not proceedings are brought in respect of the contravention<sup>19</sup>.

Where the fire authority is satisfied, as regards any premises with respect to which a notice<sup>20</sup> has been given to it, that the carrying out of the proposals notified would not result in certain matters<sup>21</sup> becoming inadequate, it must, on production of the fire certificate in force with

respect to the premises, cause to be attached to it a copy of the notice together with a written statement that it is so satisfied<sup>22</sup>.

Where the fire authority amends a fire certificate<sup>23</sup> of which a copy is required to be kept in the premises to which the certificate relates<sup>24</sup>, it must cause the copy to be similarly amended; and where the fire authority causes any document to be attached to such a fire certificate<sup>25</sup>, it must cause the like document to be attached to the copy of the certificate required to be kept in the premises to which the certificate relates<sup>26</sup>.

1 For the meaning of 'premises' see PARA 82 ante. As to the necessity for a fire certificate see PARA 83 ante.

2 For the meaning of 'fire authority' see PARA 17 ante.

3 For the meaning of 'relevant building' see PARA 111 note 5 ante.

4 I.e. any of the matters mentioned in the Fire Precautions Act 1971 s 6(1)(b)-(c), (d) (as amended), (e): see PARA 111 ante.

5 I.e. prescribed for the purposes of *ibid* s 8(1): see note 7 *infra*. For the meaning of 'prescribed' see PARA 82 note 22 ante.

6 Where the premises in which a fire certificate is required are factory premises, office premises, railway premises or shop premises and (1) are held under a lease or agreement for a lease or under a licence and consist of part of a building all parts of which are in the same ownership; or (2) consist of part of a building in which different parts are owned by different persons, for references to the 'occupier' in *ibid* s 8(2) (except s 8(2)(c)) (as added) (see the text and note 12 *infra*), (7) there is substituted, in the case of premises falling within head (1) *supra*, references to the owner of the building and, in the case of premises falling within head (2) *supra*, references to the persons who between them own the building: s 28A, Sch 2 Pt II para 3(1), (2), (3) (s 28A and Sch 2 both added by the Fire Safety and Safety of Places of Sport Act 1987 s 16, Sch 1). As to factory premises, office premises, railway premises or shop premises see PARA 83 note 16 ante.

7 Fire Precautions Act 1971 s 8(1). For these purposes a description of premises may be framed in any one of the ways mentioned in s 1(4) (see PARA 83 ante): s 8(1). Section 8 (as amended) applies to premises owned by the Crown but not occupied by it: s 40(1)(b). However, the expressions 'owner of the building' and 'the persons who between them own the building' do not include the Crown in the modifications made of s 8(7) (as added) by Sch 2 para 3(3) (as added) (see note 6 *supra*) (as added): Sch 2 Pt II para 3(7)(a) (as added: see note 6 *supra*)

8 *Ibid* s 8(2)(a).

9 'Furniture' includes furnishings (including wall-coverings and ceiling-coverings of all sorts, as well as floor-coverings): *ibid* s 43(1).

10 *Ibid* s 8(2)(b).

11 I.e. for the purposes of *ibid* s 8(2)(c): see the text and note 12 *infra*. Where there is in force a notice under s 3 (see PARA 92 ante) relating to any premises, s 8(1)-(7), (8) (as amended), (9) applies to them subject to the following modifications: (1) in s 8(2), the first reference to the occupier must be read as a reference to the occupier or the notified person, the second reference to the occupier must be read as a reference to the occupier or the notified person, as the case may be, and the third reference to the occupier must be read as a reference to the person required by s 8(2) to give notice of the proposals; (2) in s 8(4) and (7), references to the occupier must, if the notice under s 8(2) was given by the notified person, be read as references to that person; and (3) in s 8(5), references to the occupier must be read as references to the notified person: s 8(10).

12 *Ibid* s 8(2)(c) (modified by Sch 2 Pt II para 5(a) (as added: see note 6 *supra*)).

13 *Ibid* s 8(2). As to the modifications to s 8(2) where there is in force a notice under s 3 (see PARA 92 ante) relating to any premises see note 11 *supra*. Where the premises in which a fire certificate is required are factory premises, office premises, railway premises or shop premises and (1) are held under a lease or agreement for a lease or under a licence and consist of part of a building all parts of which are in the same ownership; or (2) consist of part of a building in which different parts are owned by different persons, the occupier must, before the carrying out of the proposals in heads (1)-(3) in the text is begun give notice of the proposals to the fire authority and furnish to the persons responsible for giving notice of the proposals to the fire authority any information in his possession which is relevant to those proposals; and if the carrying out of the proposals is begun without such notice having been given, the occupier is guilty of an offence: see s 8(2), Sch 2 Pt II para 3(1), (5) (as added: see note 6 *supra*). A person guilty of an offence under s 8(2), (3) or (7) is liable on summary

conviction to a fine not exceeding the prescribed sum; and on conviction on indictment to a fine or to imprisonment for a term not exceeding two years, or both: s 8(8) (substituted by virtue of the Magistrates Courts Act 1980 s 32(2)). As to the prescribed sum see PARA 57 note 4 ante.

14 Ie under the Fire Precautions Act 1971 s 6(5): see PARA 111 text and note 31 ante.

15 Ie for the purposes of ibid s 8(3): see the text and note 16 infra. For the meaning of 'notified person' see PARA 92 note 10 ante.

16 Ibid s 8(3) (modified by Sch 2 Pt II para 5(b) (as added: see note 6 supra)). As to the penalties see note 13 supra.

17 Ie in pursuance of ibid s 8(4)(b): see PARA 113 post.

18 Ibid s 8(7). As to the penalties see note 13 supra.

19 Ibid s 8(7). As to the modifications to s 8(7) where there is in force a notice under s 3 (see PARA 92 ante) relating to any premises see note 11 supra.

20 Ie under ibid s 8(2): see the text and notes 8-13 supra.

21 Ie any of the matters mentioned in ibid s 6(1)(b)-(c), (d) (as amended), (e): see PARA 111 ante.

22 Ibid s 8(11).

23 Ie in pursuance of ibid s 8 (as amended).

24 Ie by virtue of ibid s 6(9): see PARA 92 ante.

25 Ie in pursuance of ibid s 8(11): see the text and note 22 supra.

26 Ibid s 8(12).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **111-122 Contents of fire certificate ... Effect of modifications**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(ii) Fire Certificates/113. Variation of fire certificate in consequence of change of conditions.

### **113. Variation of fire certificate in consequence of change of conditions.**

If the fire authority<sup>1</sup> is satisfied, as regards any premises<sup>2</sup> with respect to which a notice<sup>3</sup> has been given to it, that the carrying out of the proposals notified would result in certain matters<sup>4</sup> becoming inadequate in relation to any use of the premises covered by the relevant fire certificate, it may by notice served on the occupier<sup>5</sup> within two months from the receipt of the notice<sup>6</sup> (1) inform the occupier of the steps which would have to be taken in relation to the relevant building<sup>7</sup> (whether by way of making alterations to any part of the relevant building or otherwise) to prevent the matters in question from becoming in its opinion inadequate in relation to that use in the event of the proposals being carried out<sup>8</sup>; and (2) give him such directions as the fire authority considers appropriate for securing, as regards any of the proposals which may be specified in the directions, that that proposal, or any stage of it which may be so specified, is not carried out until such of those steps as may be so specified in relation to that proposal or stage have been taken (whether by him or otherwise)<sup>9</sup>; and if those steps are duly taken in connection with the carrying out of the proposals, the fire authority must amend the fire certificate or issue a new one<sup>10</sup>.

Where, while a fire certificate is in force with respect to any premises, the fire authority receives notice<sup>11</sup> of any proposals<sup>12</sup> to which building regulations imposing requirements as to means of escape in case of fire apply, and in connection with those proposals plans have, in accordance with building regulations, been deposited with a local authority, the fire authority must not make the carrying out of those proposals conditional on the making to the relevant building of structural or other alterations relating to escape from the premises<sup>13</sup> unless (a) there are in force regulations<sup>14</sup> applying to the premises in relation to any use of the premises covered by the certificate, being regulations which impose certain requirements<sup>15</sup>, and the fire authority is satisfied that the carrying out of the proposals in compliance with the requirements of the building regulations will not of itself ensure that, when the proposals have been carried out, the premises will comply with the regulations in respect of such requirements which the regulations impose<sup>16</sup>; or (b) the fire authority is satisfied that, by reason of matters or circumstances of which particulars are not required by or under the building regulations to be supplied to the local authority in connection with the deposit of plans, the carrying out of the proposals in compliance with the requirements of the building regulations will not of itself ensure that, when the proposals have been carried out, the means of escape in case of fire with which the premises will then be provided and the means<sup>17</sup> with which the relevant building will then be provided will be adequate in relation to every use of the premises covered by the certificate<sup>18</sup>.

If the fire authority is satisfied (whether as a result of an inspection<sup>19</sup> or otherwise) that, as regards any premises with respect to which a fire certificate is in force, any of certain matters<sup>20</sup> has, in consequence of a change of conditions, become inadequate in relation to any use of the premises covered by the certificate, it may by notice served on the occupier<sup>21</sup> (i) inform him of that fact and of the steps which would have to be taken in relation to the relevant building (whether by way of making alterations to any part of the relevant building or otherwise) to make the matter in question adequate in its opinion in relation to that use<sup>22</sup>; and (ii) notify him that if those steps are not taken (whether by him or otherwise) within such period as may be specified in the notice, the fire certificate may be cancelled<sup>23</sup>; and if those steps are duly taken, the fire authority must, if necessary, amend the fire certificate or issue a new one<sup>24</sup>.

If the fire authority considers (whether as a result of an inspection made<sup>25</sup>) that, as regards any premises with respect to which a fire certificate is in force, it would, in consequence of a change of conditions or of the coming into force of any regulations<sup>26</sup>, be appropriate to amend the certificate for any of the following purposes<sup>27</sup>:

- 105 (A) to vary or revoke any requirement which the certificate imposes<sup>28</sup>; or
- 106 (B) to add to the requirements which the certificate so imposes<sup>29</sup>; or
- 107 (C) to alter the effect of the certificate as to the person or persons responsible<sup>30</sup> for contraventions of any requirement imposed<sup>31</sup> by the certificate<sup>32</sup>,

the authority may make such amendments in the certificate as it thinks appropriate for that purpose or issue a new certificate embodying those amendments<sup>33</sup>.

Where a fire authority issues a fire certificate<sup>34</sup>, or, except in certain circumstances<sup>35</sup>, amends a fire certificate or, as an alternative to amendment, issues a new fire certificate<sup>36</sup>, the applicant for the certificate or, as the case may be, the occupier<sup>37</sup> of the premises to which the amended or new certificate relates must pay to the authority such fee as the authority determines<sup>38</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 For the meaning of 'premises' see PARA 82 ante.

3 I.e. under the Fire Precautions Act 1971 s 8(2): see PARA 112 ante.

4 I.e. any of the matters mentioned in ibid s 6(1)(b)-(c), (d) (as amended), (e): see PARA 111 ante.

5 Where the premises in which a fire certificate is required are factory premises, office premises, railway premises or shop premises and (1) are held under a lease or agreement for a lease or under a licence and consist of part of a building all parts of which are in the same ownership; or (2) consist of part of a building in which different parts are owned by different persons, for references to the 'occupier' in ibid ss 8(4), (5), 8B(1) (as added) there is substituted, in the case of premises falling within head (1) supra, references to the owner of the building and, in the case of premises falling within head (2) supra, references to the persons who between them own the building: s 28A, Sch 2 Pt II para 3(1), (2), (3) (s 28A and Sch 2 both added by the Fire Safety and Safety of Places of Sport Act 1987 s 16, Sch 1). As to factory premises, office premises, railway premises or shop premises see PARA 88 note 16 ante.

6 Fire Precautions Act 1971 s 8(4). The reference in the text to the receipt of the notice is to receipt under s 8(2) (see PARA 112 ante): s 8(4). As to the modifications to s 8(4) where there is in force a notice under s 3 (see PARA 92 ante) relating to any premises see PARA 112 note 11 ante.

Any notice or other document required or authorised by or by virtue of the Fire Precautions Act 1971 to be served on any person may be served on him either by delivering it to him, leaving it at his proper address or by sending it by post: s 38(1). If the name or the address of any owner or occupier of premises on whom any such notice or other document is to be served cannot after reasonable inquiry be ascertained by the person seeking to serve it, the document may be served by addressing it to the person on whom it is to be served by the description of 'owner' or 'occupier' of the premises (describing them) to which the notice relates, and by delivering it to some responsible person resident or appearing to be resident on the premises, or, if there is no such person to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises: s 38(4). Any notice or other document required or authorised to be served on a body corporate or a firm is duly served if it is served on the secretary or clerk of that body or a partner of that firm: s 38(2). For the purposes of s 38, and the Interpretation Act 1889 s 26 in its application to the Fire Precautions Act 1971 s 38, the proper address of any person, in the case of the secretary or clerk of a body corporate, is that of the registered or principal office of that body, in the case of a partner of a firm, is that of the principal office of the firm, and in any other case is the last known address of the person to be served: s 38(3). Section 38 has effect with modifications in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if the requirements of those regulations were requirements made under regulations made under the Fire Precautions Act 1971 s 12 (as amended) (see PARAS 119-121 post) and as if references to premises, owner or occupier include references to workplace and employer or other persons on whom obligations are imposed under the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended): see reg 17 (amended by SI 1999/1877); and PARA 122 post.

7 For the meaning of 'relevant building' see PARA 111 note 5 ante.

8 Fire Precautions Act 1971 s 8(4)(a). The fire authority has a corresponding power to ensure that the provision made is in conformity with fire precautions regulations made under s 12 (as amended): see s 12(8)(b); and PARA 121 post. As to the duty of a fire authority to consult other authorities before requiring alterations in buildings see PARA 117 post.

9 Ibid s 8(4)(b).

10 Ibid s 8(4).

11 Ie under ibid s 8(2): see PARA 112 ante.

12 Ie falling within ibid s 8(2): see PARA 112 ante.

13 Ibid s 13(3). The reference in the text to making the carrying out of proposals conditional on the making of structural or other alterations is in pursuance of s 8(4) (see the text and notes 6-10 supra): s 13(3). For the purposes of s 13 (as amended), the acceptance by a local authority of an official notice or an amendment notice relating to any work is treated as the deposit of plans of the work with the authority in accordance with building regulations; and the reference in s 13(3) to considerations not before the local authority in connection with the deposited plans is construed as a reference to considerations which would not be or, as the case may be, would not have been required to be before the local authority if plans were to be or had been deposited with the authority in accordance with building regulations: see the Building Act 1984 s 48(4) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 7(4)); and BUILDING. 'Building regulations' means regulations made under the Building Act 1984 s 1, applying subject to any direction made under s 8: see s 122; and BUILDING. 'Structural or other alterations relating to escape from the premises', in relation to any such premises as are mentioned in the Fire Precautions Act 1971 s 13 (as amended), means structural or other alterations directly connected with the provision of the premises with adequate means of escape in case of fire or the provision of the relevant building with adequate means of the sort mentioned in s 5(3)(b) (see PARA 115 post): s 13(4). For the meaning of 'local authority' see PARA 92 note 9 ante.

14 Ie under ibid s 12 (as amended): see PARAS 119-121 post.

15 Ie such requirements as are mentioned in ibid s 13(1)(i): see PARA 115 text and note 23 post.

16 Ibid s 13(3)(a).

17 Ie means of the sort mentioned in ibid s 5(3)(b): see PARA 115 post.

18 Ibid s 13(3)(b).

19 Ie made under ibid s 8(1): see PARA 112 ante.

20 Ie any of the matters mentioned in ibid s 6(1)(b)-(c), (d) (as amended), (e): see PARA 111 ante.

21 Ibid s 8(5). As to references to 'occupier' in s 8(5) see note 5 supra. As to the modifications to s 8(5) where there is in force a notice under s 3 (see PARA 92 ante) relating to any premises see PARA 112 note 11 ante.

22 Ibid s 8(5)(a).

23 Ibid s 8(5)(b).

24 Ibid s 8(5). Where a notice has been served under s 8(5) in connection with any premises and the steps mentioned in it in accordance with s 8(5)(a) are not taken within the period specified in the notice in accordance with s 8(5)(b) (see note 23 supra) or such longer period as may be allowed by the fire authority or by any order made by a court on, or in proceedings arising out of, an appeal under s 9 (see PARA 116 post) against the notice, the fire authority may cancel the fire certificate in force with respect to the premises or, if it covers two or more uses of the premises, may either cancel it or amend it so as to remove from those uses one or more of them (and in that case may make in it all such amendments it thinks appropriate in connection with the removal of the use or uses in question): s 8(9).

25 Ie under ibid s 8(1) or otherwise: see PARA 112 ante.

26 Ie made under ibid s 12 (as amended): see PARAS 119-121 post.

27 Ibid s 8(6).

28 Ibid s 8(6)(a). The reference in the text to any requirement which the certificate imposes is to one imposed by virtue of s 6(2): see PARA 111 ante.



29 Ibid s 8(6)(b).

30 Ie under or by virtue of ibid s 6(5): see PARA 111 ante.

31 Ie whether by virtue of ibid s 6(2) or otherwise: see PARA 111 ante. For the meaning of 'contravention' see PARA 89 note 13 ante.

32 Ibid s 8(6)(c). This provision is subject to s 6(6) (see PARA 111 ante): s 8(6)(c).

33 Ibid s 8(6).

34 Ibid s 8B(1)(a) (s 8B added by the Fire Safety and Safety of Places of Sport Act 1987 s 3). The reference in the text to the issue of a fire certificate is to issue under the Fire Precautions Act 1971 s 5 (as amended): see PARA 114 post. As to the issue of fire certificates see PARA 111 ante. Section 8B (as so added) applies to premises owned by the Crown but not occupied by it: s 40(1)(b) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 18).

35 Ie except in a case falling within the Fire Precautions Act 1971 s 8B(2) (as added): see the text and note 38 infra.

36 Ibid s 8B(1)(b) (as added: see note 34 supra). The reference in the text to the issue of a new fire certificate is to issue under s 8 (as amended): see s 8B(1)(b) (as so added).

37 As to references to 'occupier' in s 8(5) see note 5 supra.

38 Ibid s 8B(1) (as added: see note 34 supra). No fee is chargeable for the amendment of a fire certificate, or issue of a new fire certificate embodying amendments under s 8(6) (see the text and notes 25-33 supra) in a case where the amendment or amendments is or are made in consequence of the coming into force of regulations under s 12 (as amended) (see PARAS 119-121 post): s 8B(2) (as so added). A fee charged by a fire authority under s 8B (as added) in connection with the issue of a fire certificate or the amendment of a, or issue of a new, fire certificate must not exceed an amount which represents the cost to the authority of the work reasonably done by it for the purposes of the issue of the certificate or, as the case may be, the amendment of the certificate or issue of the new certificate, other than the cost of any inspection of the premises: s 8B(3) (as so added).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **111-122 Contents of fire certificate ... Effect of modifications**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(iii) Procedure as Respects Issue or Variation of Fire Certificate/114. Application for fire certificate.

### **(iii) Procedure as Respects Issue or Variation of Fire Certificate**

#### **114. Application for fire certificate.**

An application for a fire certificate with respect to any premises<sup>1</sup> must:

- 108 (1) be made to the fire authority<sup>2</sup> in the prescribed form<sup>3</sup>;
- 109 (2) specify the particular use or uses of the premises which it is desired to have covered by the certificate<sup>4</sup>;
- 110 (3) give such information as may be prescribed about the premises and any prescribed matter connected with them<sup>5</sup>; and
- 111 (4) if the premises consist of part of a building<sup>6</sup>, in so far as it is available to the applicant, give such information as may be prescribed about the rest of the building and any prescribed matter connected with it<sup>7</sup>.

On receipt of an application for a fire certificate with respect to any premises the fire authority must notify the applicant of his duties<sup>8</sup> and may require the applicant within such time as it may specify<sup>9</sup> to furnish it with such plans of the premises as it may specify<sup>10</sup>; and if the premises consist of part of a building, to furnish it, in so far as it is possible for him to do so, with such plans of such other part or parts of the building as it may specify<sup>11</sup>. If the applicant fails to furnish the required plans within that time or such further time as the authority may allow, the application is deemed to have been withdrawn at the end of that time or further time, as the case may be<sup>12</sup>.

Where an application is made for a fire certificate with respect to any premises it is the duty of the occupier<sup>13</sup> to secure that, when the application is made and pending its disposal (a) the means of escape in case of fire with which the premises are provided can be safely and effectively used at all material times<sup>14</sup>; (b) the means for fighting fire with which the premises are provided are maintained in efficient working order<sup>15</sup>; and (c) any persons employed to work in the premises receive instruction or training in what to do in case of fire<sup>16</sup>.

1 For the meaning of 'premises' see PARA 82 ante.

2 For the meaning of 'fire authority' see PARA 17 ante.

3 Fire Precautions Act 1971 s 5(1). For the meaning of prescribed see PARA 82 note 22 ante. For the prescribed form see the Fire Precautions (Application for Certificate) Regulations 1989, SI 1989/77. The Fire Precautions Act 1971 s 5 applies to premises owned by the Crown but not occupied by it: s 40(1)(b).

4 Ibid s 5(1)(a).

5 Ibid s 5(1)(b).

6 For the meaning of 'building' see PARA 82 ante.

7 Fire Precautions Act 1971 s 5(1)(c).

8 Ie under ibid s 5(2A) (as added): see the text and notes 14-16 infra.

9 Ibid s 5(2) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 8(2)).

10 Fire Precautions Act 1971 s 5(2)(a).

11 Ibid s 5(2)(b).

12 Ibid s 5(2).

13 Where the premises in which a fire certificate is required are factory premises, office premises, railway premises or shop premises and (1) are held under a lease or agreement for a lease or under a licence and consist of part of a building all parts of which are in the same ownership; or (2) consist of part of a building in which different parts are owned by different persons, for references to the 'occupier' in ibid s 5(2A) (as added) there is substituted, in the case of premises falling within head (1) supra, references to the owner of the building and, in the case of premises falling within head (2) supra, references to the persons who between them own the building: s 28A, Sch 2 Pt II para 3(1), (2), (3) (s 28A and Sch 2 both added by the Fire Safety and Safety of Places of Sport Act 1987 s 16, Sch 1). As to factory premises, office premises, railway premises or shop premises see PARA 83 note 16 ante.

14 Fire Precautions Act 1971 s 5(2A)(a) (s 5(2A) added by the Fire Safety and Safety of Places of Sport Act 1987 s 8(2)). For the meaning of 'escape' see PARA 87 note 6 ante. The Fire Precautions Act 1971 s 5(2A) (as added) applies to Crown premises: s 40(1) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 18).

15 Fire Precautions Act 1971 s 5(2A)(b) (as added: see note 14 supra).

16 Ibid s 5(2A)(c) (as added: see note 14 supra).

## UPDATE

### 81-149 Fire Precautions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 111-122 Contents of fire certificate ... Effect of modifications

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(iii) Procedure as Respects Issue or Variation of Fire Certificate/115. Consideration of application.

### 115. Consideration of application.

Where an application for a fire certificate with respect to any premises<sup>1</sup> has been duly made and all such plans (if any) as are required to be furnished<sup>2</sup> in connection with it have been duly furnished, it is the duty of the fire authority<sup>3</sup> to consider whether or not, in the case of premises which qualify for exemption<sup>4</sup>, to grant exemption and, if it does not grant it, it is its duty to cause to be carried out an inspection of the relevant building<sup>5</sup> (including any part of it which consists of premises to which any exemption applies<sup>6</sup>), and if the fire authority is satisfied, as regards any use of the premises which is specified in the application, that:

- 112 (1) the means of escape in case of fire with which the premises are provided<sup>7</sup>; and
- 113 (2) the means (other than means for fighting fire) with which the relevant building is provided for securing that the means of escape with which the premises are provided can be safely and effectively used at all material times<sup>8</sup>; and
- 114 (3) the means for fighting fire (whether in the premises or affecting the means of escape) with which the relevant building is provided<sup>9</sup>; and
- 115 (4) the means with which the relevant building is provided for giving to persons in the premises warning in case of fire<sup>10</sup>,

are such as may reasonably be required in the circumstances of the case in connection with that use of the premises, the authority must issue a certificate covering that use<sup>11</sup>.

Where the fire authority, after causing to be carried out an inspection of the relevant building<sup>12</sup>, is, as regards any use of the premises specified in the application, not satisfied that the means mentioned in heads (1) to (4) above<sup>13</sup> are such as may reasonably be required in the circumstances of the case in connection with that use, it must by notice served on the applicant<sup>14</sup>:

- 116 (a) inform him of that fact and of the steps which would have to be taken (whether by way of making alterations to any part of the relevant building or of otherwise providing that building or, as the case may be, the premises with any of those means) to satisfy it as regards that use<sup>15</sup>; and
- 117 (b) notify him that it will not issue a fire certificate covering that use unless those steps are taken (whether by the applicant or otherwise) within a specified time<sup>16</sup>,

and if at the end of that time or such further time as may be allowed by the authority or by any order made by a court on, or in proceedings arising out of, an appeal<sup>17</sup> against the notice, a certificate covering that use has not been issued, it is deemed to have been refused<sup>18</sup>.

Where an application is made for a fire certificate with respect to any premises and the relevant building is a building to which at the time of its erection building regulations imposing requirements as to means of escape in case of fire applied<sup>19</sup>, and in connection with the erection of that building plans were, in accordance with building regulations, deposited with a local authority<sup>20</sup>, the fire authority must not make the issue of a certificate conditional on the making to the building of structural or other alterations relating to escape from the premises<sup>21</sup> unless:

- 118 (i) there are in force<sup>22</sup> regulations applying to the premises in relation to any use of the premises specified in the application, being regulations which impose requirements as to means of escape in case of fire or means for securing that any means of escape can be safely and effectively used at all material times, and the fire authority is satisfied that alterations to the relevant building are necessary to bring the premises into compliance with the regulations in respect of those requirements<sup>23</sup>; or
- 119 (ii) the fire authority is satisfied that the means of escape in case of fire with which the premises are provided or the means<sup>24</sup> with which the relevant building is provided are inadequate in relation to any use of the premises so specified by reason of matters or circumstances of which particulars were not required by or under the building regulations to be supplied to the local authority in connection with the deposit of plans<sup>25</sup>.

1 For the meaning of 'premises' see PARA 82 ante. As to an application for a fire certificate see PARA 114 ante.

2 Ie under the Fire Precautions Act 1971 s 5(2): see PARA 114 ante.

3 For the meaning of 'fire authority' see PARA 17 ante.

4 Ie under the Fire Precautions Act 1971 s 5A (as added): see PARA 86 ante.

5 For the meaning of 'relevant building' see PARA 83 note 27 ante.

6 Fire Precautions Act 1971 s 5(3) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 1(3)). The reference in the text to any exemption is to one conferred by or under the Fire Precautions Act 1971: see s 5(3) (as so added).

7 Ibid s 5(3)(a).

8 Ibid s 5(3)(b).

9 Ibid s 5(3)(c) (amended by the Fire Safety and Safety of Places of Sport Act 1987 ss 15, 49, Sch 4).

10 Fire Precautions Act 1971 s 5(3)(d).

11 Ibid s 5(3).

12 Ie under ibid s 5(3): see the text and notes 6-11 supra.

13 Ie in ibid s 5(3): see the text and notes 6-11 supra.

14 Ibid s 5(4). As to service of notices see PARA 113 note 6 ante.

15 Fire Precautions Act 1971 s 5(4)(a).

16 Ibid s 5(4)(b). As to expenditure incurred on fire safety in respect of certain trade premises see the Capital Allowances Act 1990 s 69 (as amended). As to the authority's duty to consult other authorities before requiring alterations in buildings see PARA 117 post. See also INCOME TAXATION.

17 Ie under ibid s 9: see PARA 116 post.

18 Ibid s 5(4).

19 Ibid s 13(1)(a).

20 Ibid s 13(1)(b). As to the deposit of plans with the local authority see PARA 113 note 13 ante.

21 Ibid s 13. The reference in the text to making the issue of a fire certificate conditional on the making of structural or other alterations is in pursuance of s 5(4) (see the text and notes 14-18 supra): s 13. For the meaning of 'structural or other alterations relating to escape from the premises' see PARA 113 note 13 ante.

22 Ie under ibid s 12 (as amended): see PARAS 119-121 post.

23 Ibid s 13(1)(i).

24 le of the sort mentioned in ibid s 5(3)(b): see the text to note 8 supra.

25 Ibid s 13(1)(ii). Where an application is made for a fire certificate with respect to any premises in the circumstances described in s 13(1)(a) and (b) (see the text and notes 19-20 supra) and since the erection of the building plans have, in accordance with building regulations, been deposited with a local authority in connection with any proposals relating to the building, s 13(1) has effect in relation to that application as if in s 13(1)(ii) the reference to the deposit of plans included a reference to the deposit of plans in connection with those proposals: s 13(2). For the meaning of 'local authority' see PARA 92 note 9 ante.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **111-122 Contents of fire certificate ... Effect of modifications**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(iii) Procedure as Respects Issue or Variation of Fire Certificate/116. Appeals.

## **116. Appeals.**

A person who is aggrieved<sup>1</sup>:

- 120 (1) by anything mentioned in a notice<sup>2</sup> as a step which would have to be taken as a condition of the issue of a fire certificate with respect to any premises, or by the period allowed by such a notice for the taking of any steps mentioned in it<sup>3</sup>; or
- 121 (2) by the refusal of the fire authority to issue a fire certificate with respect to any premises<sup>4</sup>; or
- 122 (3) by the inclusion of anything in, or the omission of anything from, a fire certificate issued with respect to any premises by the fire authority<sup>5</sup>; or
- 123 (4) by the refusal of the fire authority to cancel or to amend a fire certificate issued with respect to any premises<sup>6</sup>; or
- 124 (5) by any direction<sup>7</sup>; or
- 125 (6) by anything mentioned in a notice<sup>8</sup> with respect to any premises as a step which must be taken if the fire authority is not to become entitled to cancel the fire certificate relating to the premises, or by the period allowed by such a notice for the taking of any steps mentioned in it<sup>9</sup>; or
- 126 (7) by the amendment or cancellation<sup>10</sup> of a fire certificate issued with respect to any premises<sup>11</sup>,

may, within 21 days from the relevant date, appeal to the court, and on any such appeal the court may make such order as it thinks fit<sup>12</sup>.

Where an appeal is brought<sup>13</sup> against the refusal of the fire authority to issue a fire certificate with respect to any premises or the cancellation or amendment<sup>14</sup> of a fire certificate issued with respect to any premises, a person is not guilty of an offence<sup>15</sup> by reason of the premises in question being put to a designated use or used as a dwelling at a time between the relevant date and the final determination of the appeal<sup>16</sup>.

Where an appeal is brought against the inclusion in a fire certificate of anything which has the effect of making the certificate impose a requirement, a person is not guilty of an offence<sup>17</sup> by reason of a contravention of that requirement which occurs at a time between the relevant date and the final determination of the appeal<sup>18</sup>.

Where an appeal is brought against (a) the inclusion in a fire certificate<sup>19</sup> of a provision making any person responsible for contraventions of any requirement imposed by the certificate<sup>20</sup>; or (b) the omission from a fire certificate of a provision which, if so included, would prevent any person from being, as the occupier<sup>21</sup> of any premises, responsible<sup>22</sup> for contraventions of any requirement imposed by the certificate<sup>23</sup>, that person is not guilty of an offence<sup>24</sup> by reason of a contravention of that requirement which occurs at a time between the relevant date and the final determination of the appeal<sup>25</sup>.

A person aggrieved (which may be a fire authority or local authority) by an order made by a magistrates' court on determining a complaint under the Fire Precautions Act 1971 may appeal to the Crown Court<sup>26</sup>.

<sup>1</sup> A local authority, buildings authority or other authority who has in accordance with the Fire Precautions Act 1971 s 17 (as amended) (see PARA 117 post) been consulted by a fire authority proposing to serve any such

notice as is mentioned in s 17(1) (as amended) (see PARA 117 post) may be a person aggrieved within the meaning of s 9 (see the text and notes 2-12 infra): s 17(2) (amended by the Health and Safety at Work etc Act 1974 s 78).

2 le served under the Fire Precautions Act 1971 s 5(4): see PARA 115 ante. As to persons aggrieved see JUDICIAL REVIEW vol 61 (2010) PARA 656.

3 Ibid s 9(1)(a). For the meaning of 'premises' see PARA 82 ante.

4 Ibid s 9(1)(b). For the meaning of 'fire authority' see PARA 17 ante.

5 Ibid s 9(1)(c).

6 Ibid s 9(1)(d).

7 Ibid s 9(1)(e). The reference in the text to a direction is to one given in pursuance of s 8(4)(b) (see PARA 113 ante): s 9(1)(e).

8 le served under ibid s 8(5): see PARA 113 ante.

9 Ibid s 9(1)(f).

10 le in pursuance of ibid s 8(6) (see PARA 113 ante), (7) (see PARA 112 ante) or (9) (see PARA 113 ante).

11 Ibid s 9(1)(g).

12 Ibid s 9(1). The procedure is by way of complaint for an order, and the Magistrates' Courts Act 1980 applies to the proceedings (See MAGISTRATES): see the Fire Precautions Act 1971 s 26(1) (amended by the Magistrates Courts Act 1980 s 154, Sch 7 para 103). The making of the complaint is deemed to be the bringing of the appeal: Fire Precautions Act 1971 s 26(2). For the meaning of 'court' see PARA 91 note 2 ante.

For the purposes of s 9, 'the relevant date' means in relation to a person aggrieved by any such refusal, direction, cancellation or amendment as is mentioned in s 9(1) or by any matter mentioned in s 9(1)(a) (see the text and note 3 supra) or (f) (see the text and note 9 supra), the date on which he was first served by the fire authority with notice of the refusal, direction, cancellation, amendment or matter in question (s 9(2)(a)); and, in relation to a person aggrieved by the inclusion of anything in, or the omission of anything from, a fire certificate issued with respect to any premises, the date on which the inclusion or omission was first made known to him; and, for these purposes, a person who is served with a fire certificate or a copy of, or of any part of, a fire certificate is taken to have had what the certificate or that part of it does and does not contain made known to him at the time of the service on him of the certificate or copy (s 9(2)(b)).

13 le under ibid s 9.

14 le in pursuance of ibid s 8(7) (see PARA 112 ante) or (9) (see PARA 113 ante).

15 le under ibid s 7(1) (see PARA 83 ante) or (2) (see PARA 92 ante).

16 Ibid s 9(3).

17 le under ibid s 7(4): see PARA 111 ante.

18 Ibid s 9(4). For the meaning of 'contravention' see PARA 89 note 13 ante.

19 le in pursuance of ibid s 6(5): see PARA 111 ante.

20 Ibid s 9(5)(a).

21 Where the premises in which a fire certificate is required are factory premises, office premises, railway premises or shop premises and (1) are held under a lease or agreement for a lease or under a licence and consist of part of a building all parts of which are in the same ownership; or (2) consist of part of a building in which different parts are owned by different persons, for references to the 'occupier' in ibid s 9(5)(b) there is substituted, in the case of premises falling within head (1) supra, references to the owner of the building and, in the case of premises falling within head (2) supra, references to the persons who between them own the building: s 28A, Sch 2 Pt II para 3(1), (2), (3) (s 28A and Sch 2 both added by the Fire Safety and Safety of Places of Sport Act 1987 s 16, Sch 1). As to factory premises, office premises, railway premises or shop premises see PARA 83 note 16 ante.

22 le under the Fire Precautions Act 1971 s 6(5): see PARA 111 ante.



23 Ibid s 9(5)(b).

24 Ie under ibid s 7(4): see PARA 111 ante.

25 Ibid s 9(5).

26 See ibid s 27(1). As to the prerogative orders of mandamus, certiorari and prohibition against magistrates' courts see JUDICIAL REVIEW vol 61 (2010) PARA 688 et seq. As to appeals by way of case stated see COURTS; MAGISTRATES.

Sections 26 (as amended) (see note 12 supra) and 27 (as amended) have effect with modifications in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if the requirements of those regulations were requirements made under regulations made under the Fire Precautions Act 1971 s 12 (as amended) (see PARAS 119-121 post) and as if references to premises, owner or occupier include references to workplace and employer or other persons on whom obligations are imposed under the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended): see reg 17 (amended by SI 1999/1877); and PARA 122 post.

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Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(iv) Consultation between Authorities/117. Consultation by fire authority before requiring alterations.

#### **(iv) Consultation between Authorities**

##### **117. Consultation by fire authority before requiring alterations.**

Before a fire authority<sup>1</sup> (1) serves on the applicant for a fire certificate with respect to any premises<sup>2</sup> a notice<sup>3</sup> informing him that it will not issue a certificate unless alterations are made to the relevant building<sup>4</sup>; or (2) serves in respect of any premises a notice<sup>5</sup> mentioning as a step which would have to be taken or, as the case may be<sup>6</sup>, which must be taken anything involving the making of alterations to the relevant building<sup>7</sup>, the authority must (a) if the fire authority is not the local authority<sup>8</sup> for the area in which the premises are situated, consult that local authority<sup>9</sup>; and (b) if the premises are used as a place of work<sup>10</sup> and are within the field of responsibility of one or more enforcing authorities<sup>11</sup> consult that authority or each of those authorities<sup>12</sup>.

1 For the meaning of 'fire authority' see PARA 17 ante.

2 For the meaning of 'premises' see PARA 82 ante. As to an application for a fire certificate see PARA 114 ante.

3 Ie under the Fire Precautions Act 1971 s 5(4): see PARA 115 ante. As to the service of notices see PARA 113 note 6 ante.

4 Ibid s 17(1)(a). Section 17 (as amended) does not apply to any premises occupied by the United Kingdom Atomic Energy Authority: s 41. As to the United Kingdom Atomic Energy Authority see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1363 et seq.

5 Ie under ibid s 8(4) or (5) (see PARA 113 ante), s 9D (as added) (see PARA 90 ante) or s 12(8)(b) (see PARA 121 post).

6 Ie in the case of a notice under ibid s 9D (as added): see PARA 90 ante.

7 Ibid s 17(1)(b) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 7(3)). For the meaning of 'relevant building', see PARA 83 note 27 ante.

8 For the meaning of 'local authority' see PARA 92 note 9 ante.

9 Fire Precautions Act 1971 s 17(1)(i) (amended by the Health and Safety at Work etc Act 1974 s 78; and the Local Government Reorganisation (Miscellaneous Provision) Order 1988, SI 1988/1955, art 3).

10 For the meaning of 'work' see PARA 83 note 10 ante.

11 Ie within the meaning of the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended): see HEALTH AND SAFETY AT WORK.

12 Fire Precautions Act 1971 s 17(1)(iii) (added by the Health and Safety at Work etc Act 1974 s 78). For the meaning of 'enforcing authority' and of such an authority's 'field of responsibility', for these purposes, see the Health and Safety at Work etc Act 1974 s 18(7) (See HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375); definition applied by the Fire Precautions Act 1971 s 17(3) (added by the Health and Safety at Work etc Act 1974 s 78).

#### **UPDATE**

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Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(2) REQUIREMENT OF FIRE CERTIFICATE/(iv) Consultation between Authorities/118. Consultation by building authority with fire authority before passing plans.

### **118. Consultation by building authority with fire authority before passing plans.**

Where it is proposed to erect a building<sup>1</sup> or to make any extension of or structural alteration to a building and, in connection with the proposals, plans are, in accordance with building regulations<sup>2</sup>, deposited with a local authority<sup>3</sup>, then, if it appears to the local authority likely (1) that the first use to which any premises<sup>4</sup> constituting or comprised in the building or, as the case may be, the building as extended, will be put after the proposals are carried out will be a use which at the time of the deposit of the plans was a designated use<sup>5</sup>; or (2) that the first use to which any such premises will be put after the proposals are carried out will be use as a dwelling, and that one or more of certain conditions<sup>6</sup> will then be fulfilled as regards those premises<sup>7</sup>, the local authority, if it is not the fire authority<sup>8</sup>, must consult the fire authority before passing the plans<sup>9</sup>.

Where it is proposed to change the use to which a building or part of a building is put and, in connection with that proposal, plans are, in accordance with building regulations, deposited with a local authority<sup>10</sup>, then, if it appears to the local authority likely (a) that the first use to which any premises constituting or comprised in the building will be put after the time when that change of use occurs will be a use which at the time of the deposit of the plans was a designated use<sup>11</sup>; or (b) that the first use to which any such premises will be put after the time when that change of use occurs will be use as a dwelling, and that one or more of certain conditions<sup>12</sup> will then be fulfilled as regards those premises<sup>13</sup>, the local authority, if it is not the fire authority, must consult the fire authority before passing the plans<sup>14</sup>.

Where, in the case of a requirement as to (i) structural fire precautions<sup>15</sup>; (ii) the provision of means of escape from buildings in case of fire<sup>16</sup>; or (iii) the provision of means for securing that such means of escape can be safely and effectively used at all material times<sup>17</sup>, contained in building regulations, the power to dispense with or relax that requirement<sup>18</sup> is exercisable by a local authority<sup>19</sup>; or where a public body proposes to exercise the power conferred on it<sup>20</sup>, the local authority or public body, if it is not the fire authority, must before exercising the power in relation to any premises or proposed premises consult the fire authority<sup>21</sup>.

Before an inspector appointed for the purposes of the Health and Safety at Work etc Act 1974<sup>22</sup> serves in connection with any premises used or about to be used as a place of work a notice requiring or likely to lead to the taking of measures affecting the means of escape in case of fire with which the premises are or ought to be provided, he must consult the fire authority<sup>23</sup>.

1 For the meaning of 'building' see PARA 82 ante.

2 As to building regulations see PARA 113 note 13 ante.

3 Fire Precautions Act 1971 s 16(1). Section 16 has effect with modifications in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if the requirements of those regulations were requirements made under regulations made under the Fire Precautions Act 1971 s 12 (as amended) (see PARAS 119-121 post) and as if references to premises, owner or occupier include references to workplace and employer or other persons on whom obligations are imposed under the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended): see reg 17 (amended by SI 1999/1877); and PARA 122 post. For the meaning of 'local authority' see PARA 92 note 9 ante.

4 For the meaning of 'premises' see PARA 82 ante.

5 Fire Precautions Act 1971 s 16(1)(a). For the meaning of 'designated use' see PARA 83 ante.

- 6 le the conditions set out in *ibid* s 3(1)(a) and (b): see *PARA 92 ante*.
- 7 *Ibid* s 16(1)(b). At the date at which this volume states the law no order had been made under s 44(3) bringing s 16(1)(b) into force.
- 8 For the meaning of 'fire authority' see *PARA 17 ante*.
- 9 Fire Precautions Act 1971 s 16(1).
- 10 *Ibid* s 16(2).
- 11 *Ibid* s 16(2)(a).
- 12 le the conditions set out in *ibid* s 3(1)(a) and (b): see *PARA 92 ante*.
- 13 *Ibid* s 16(2)(b). At the date at which this volume states the law no order had been made under s 44(3) bringing s 16(2)(b) into force.
- 14 *Ibid* s 16(2).
- 15 See the Building Act 1984 s 15(1)(a); and *BUILDING*.
- 16 See *ibid* s 15(1)(b); and *BUILDING*.
- 17 See *ibid* s 15(1)(c); and *BUILDING*.
- 18 le conferred by *ibid* s 8(1): see *BUILDING*.
- 19 le by virtue of *ibid* s 8(2): see *BUILDING*.
- 20 le by *ibid* s 8(4): see *BUILDING*.
- 21 See *ibid* s 15(1); and *BUILDING*. For the meaning of 'public body' see *ibid* s 8(5); and *BUILDING*.
- 22 le under the provisions of the Health and Safety at Work etc Act 1974 s 19 (as amended): see *HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 375*.
- 23 See the Health and Safety at Work etc Act 1974 s 23(4) (as amended); and *HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 337*.

## **UPDATE**

### **81-149 Fire Precautions**

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### **111-122 Contents of fire certificate ... Effect of modifications**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.



Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(i) Power of Secretary of State to make Regulations/119. Circumstances in which power may be exercised.

### **(3) FIRE PRECAUTIONS REGULATIONS**

#### **(i) Power of Secretary of State to make Regulations**

##### **119. Circumstances in which power may be exercised.**

The Secretary of State<sup>1</sup> may by regulations:

- 127 (1) in the case of any particular use of premises<sup>2</sup> which he has power to designate<sup>3</sup>, make provision as to the precautions which, as regards premises put to that use, or any specified class of such premises, are to be taken or observed in relation to the risk to persons in case of fire<sup>4</sup>;
- 128 (2) make provision as to the precautions which are to be taken or observed in relation to the risk to persons in case of fire as regards premises which, while certain circumstances apply<sup>5</sup>, are used as a dwelling, or any specified class of such premises<sup>6</sup>.

It is the duty of the Secretary of State before making any of the regulations referred to in heads (1) and (2) above to consult with such persons and bodies of persons as appear to him requisite<sup>7</sup>.

So long as there are in force<sup>8</sup> any regulations applying to the premises in respect of that use, any term, condition or restriction imposed is of no effect in so far as it relates to any matter about which provision is made in the regulations<sup>9</sup>.

1 As to the Secretary of State see PARA 10 ante.

2 For the meaning of 'premises' see PARA 82 ante.

3 Ie under the Fire Precautions Act 1971 s 1 (as amended): see PARA 83 ante.

4 Ibid s 12(1). Nothing in any regulations made under s 12 (as amended) applies to premises of the description given in s 2 (as amended) (see PARA 84 ante) and nothing in s 12 (as amended) confers on the Secretary of State power to make provision with respect to the taking or observance of special precautions in connection with the carrying on of any manufacturing process: s 12(1) (amended by the Fire Safety and Safety of Places of Sport Act 1987 ss 13(b), 49(1), Sch 4; and the Health and Safety at Work etc Act 1974 s 78(1), (5)). The following regulations have been made under the Fire Precautions Act 1971 s 12 (as amended): the Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401 (amended by SI 1994/2184) which provide for fire precautions to be taken in certain underground and low level railway stations used by members of the public (see PARA 123 et seq post). Subject to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17(3) (see PARA 122 post), the provisions of the Fire Precautions Act 1971 listed in the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17(2) (see PARA 122 post) have effect in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if the requirements of the workplace fire precautions legislation (see PARA 122 note 1 post) were requirements of regulations made under the Fire Precautions Act 1971 s 12 (as amended): see the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17(1)(a); and PARA 122 post.

5 Ie while the Fire Precautions Act 1971 s 3 applies to such premises and a notice under s 3 is in force in relation to them: see PARA 92 ante.

6 Ibid s 12(2). At the date at which this volume states the law no order had been made under s 44(3) bringing s 12(2) into force. Section 12 (as amended) applies to premises owned by the Crown but not occupied

by it (s 40(1)(b)); and s 12(1) (as amended), (2)-(3), (4)(a) and (b) applies to premises occupied by the Crown (s 40(1)(a)). At the date at which this volume states the law s 40(1), in so far as it relates to s 12(2), (9), had not been brought into force.

7 Ibid s 12(5).

8 le under ibid s 12 (as amended).

9 Ibid s 31(b). Section 31(b) is without prejudice to s 31(a) (see PARA 111 ante): s 31(b).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **111-122 Contents of fire certificate ... Effect of modifications**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

### **119 Circumstances in which power may be exercised**

NOTE 4--SI 1989/1401, in relation to England, revoked and partially replaced: see PARAS 123-130.



Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(i) Power of Secretary of State to make Regulations/120. Contents of fire precautions regulations.

## **120. Contents of fire precautions regulations.**

Without prejudice to the generality of the powers conferred on the Secretary of State<sup>1</sup>, regulations made<sup>2</sup> by him may in particular, as regards any premises to which they apply, impose requirements<sup>3</sup>:

- 129 (1) as to the provision, maintenance and keeping free from obstruction of means of escape<sup>4</sup> in case of fire<sup>5</sup>;
- 130 (2) as to the provision and maintenance of means for securing that any means of escape can be safely and effectively used at all material times<sup>6</sup>;
- 131 (3) as to the provision and maintenance of means for fighting fire and means for giving warning in case of fire<sup>7</sup>;
- 132 (4) as to the internal construction of the premises<sup>8</sup> and the materials used in that construction<sup>9</sup>;
- 133 (5) for prohibiting altogether the presence or use in the premises of furniture<sup>10</sup> or equipment of any specified description, or prohibiting its presence or use unless specified standards or conditions are complied with<sup>11</sup>;
- 134 (6) for securing that persons employed to work<sup>12</sup> in the premises receive appropriate instruction or training in what to do in case of fire<sup>13</sup>;
- 135 (7) for securing that, in specified circumstances, specified numbers of attendants are stationed in specified parts of the premises<sup>14</sup>; and
- 136 (8) as to the keeping of records of instruction or training given, or other things done, in pursuance of the regulations<sup>15</sup>.

Regulations<sup>16</sup> may (a) impose requirements on persons other than occupiers of premises to which they apply<sup>17</sup>; and (b) as regards any of their provisions, make provision as to the person or persons who are to be responsible for any contravention of them<sup>18</sup>; and (c) provide that if any specified provision of the regulations is contravened, the person or each of the persons who under the regulations is or are responsible for the contravention is guilty of an offence<sup>19</sup>.

1    le by the Fire Precautions Act 1971 s 12(1), (2) (s 12(1) as amended): see PARA 119 ante. As to the Secretary of State see PARA 10 ante.

2    le regulations under *ibid* s 12 (as amended).

3    Ibid s 12(3). As to the application of s 12 (as amended) to Crown premises see PARA 119 note 6 ante.

4    For the meaning of 'escape' see PARA 87 note 6 ante.

5    Fire Precautions Act 1971 s 12(3)(a).

6    Ibid s 12(3)(b).

7    Ibid s 12(3)(c).

8    For the meaning of 'premises' see PARA 82 ante.

9    Fire Precautions Act 1971 s 12(3)(d).

10   For the meaning of 'furniture' see PARA 112 note 9 ante.

- 11 Fire Precautions Act 1971 s 12(3)(e).
- 12 For the meaning of 'work' see PARA 83 note 10 ante.
- 13 Fire Precautions Act 1971 s 12(3)(f).
- 14 Ibid s 12(3)(g).
- 15 Ibid s 12(3)(h).
- 16 Ie regulations under ibid s 12 (as amended).
- 17 Ibid s 12(4)(a).
- 18 Ibid s 12(4)(b). For the meaning of 'contravention' see PARA 89 note 13 ante.
- 19 Ibid s 12(4)(c). A person guilty of an offence under s 12(4)(c) is liable, on summary conviction, to a fine not exceeding the prescribed sum; and on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or both: s 12(6) (amended by virtue of the Magistrates Courts Act 1980 s 32(2)). As to the prescribed sum see PARA 57 note 4 ante.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **111-122 Contents of fire certificate ... Effect of modifications**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(i) Power of Secretary of State to make Regulations/121. Relationship between fire precautions regulations and fire certificates.

### **121. Relationship between fire precautions regulations and fire certificates.**

While there are in force<sup>1</sup> any regulations applying to premises put to a particular use, or to any specified class of such premises<sup>2</sup>, a fire authority<sup>3</sup>:

- 137 (1) in determining<sup>4</sup> whether to issue a fire certificate covering that use with respect to any premises to which the regulations apply, must proceed on the footing that, as regards any of certain matters<sup>5</sup> about which provision is made in the regulations, no more can reasonably be required in the circumstances of the case than is required by the regulations<sup>6</sup>; and
- 138 (2) must not, in any fire certificate covering that use issued with respect to any premises to which the regulations apply, impose<sup>7</sup> in relation to that use any requirement as to any matter about which provision is made in the regulations which is more onerous than the requirements of the regulations as to that matter<sup>8</sup>.

Where there are in force<sup>9</sup> any regulations applying to premises put to a particular use, or to any specified class of such premises, and a fire certificate covering that use is in force with respect to any premises to which the regulations apply<sup>10</sup>, then:

- 139 (a) so long as the requirements as to any matter which are imposed by the fire certificate in relation to that use are complied with, no person is guilty of an offence under the regulations by reason of any contravention of a requirement of the regulations as to that matter<sup>11</sup>;
- 140 (b) if as a result of an inspection made<sup>12</sup> it appears to the fire authority that any of certain matters<sup>13</sup> is not in conformity with any provision made in the regulations about that matter, the authority must by notice served on the occupier<sup>14</sup>:

5

- 8. (i) inform him of that fact and of the steps which would have to be taken in relation to the relevant building (whether by way of making alterations to any part of the relevant building or otherwise) to bring the matter in question into conformity with that provision<sup>15</sup>; and
- 9. (ii) notify him that if those steps are not taken (whether by himself or otherwise) within such period as may be specified in the notice, the fire certificate may be cancelled<sup>16</sup>;

6

and if those steps are duly taken, the fire authority must, if necessary, amend the fire certificate or issue a new one<sup>17</sup>.

1    Ie under the Fire Precautions Act 1971 s 12 (as amended).

2    Ibid s 12(7). For the meaning of 'premises' see PARA 82 ante.

3    For the meaning of 'fire authority' see PARA 17 ante.

4    Ie under the Fire Precautions Act 1971 s 5(3) (as amended): see PARA 115 ante.

5    Ie any of the matters mentioned in ibid s 5(3)(a)-(d) (as amended): see PARA 115 ante.

6 Ibid s 12(7)(a). As to the application of s 12 (as amended) to Crown premises see PARA 119 note 6 ante.

7 Ie in pursuance of ibid s 6(2): see PARA 111 ante.

8 Ibid s 12(7)(b).

9 Ie under ibid s 12 (as amended).

10 Ibid s 12(8).

11 Ibid s 12(8)(a). An existing fire certificate may be amended by the fire authority in consequence of the coming into force of fire precautions regulations applying to the premises in question: see s 8(6); and PARA 113 ante.

12 Ie under ibid s 8(1): see PARA 113 ante.

13 Ie any of the matters mentioned in ibid s 6(1)(b), (c), (d) (as amended), (e): see PARA 111 ante.

14 Ibid s 12(8)(b). This power is similar to that conferred by s 8(5), but is exercisable only following an inspection: see s 8(5); and PARA 113 ante. As to the service of notices see PARA 113 note 6 ante. Where there is in force a notice under s 3 (see PARA 92 ante) relating to any premises, s 12(8)(b) applies to them subject to the modification that the first reference to the occupier is read as a reference to the occupier or the notified person, and the other references to the occupier are read as references to the occupier or the notified person, as the case may be: s 12(9). At the date at which this volume states the law no order had been made bringing s 12(9) into force. Sections 8(9) (see PARA 113 ante) and 9 (see PARA 116 ante) have effect (with the necessary modifications) in a case where a notice is served under s 12(8)(b) with respect to any premises as they have effect in a case where a notice is served under s 8(5) (see PARA 113 ante); and where in pursuance of s 12 (as amended) the fire authority amends a fire certificate of which by virtue of s 6(9) (see PARA 92 ante) a copy is required to be kept in the premises to which the certificate relates, it must cause the copy to be similarly amended: s 12(10).

Where the premises in which a fire certificate is required are factory premises, office premises, railway premises or shop premises and (1) are held under a lease or agreement for a lease or under a licence and consist of part of a building all parts of which are in the same ownership; or (2) consist of part of a building in which different parts are owned by different persons, for references to the 'occupier' in s 12(8)(b) there is substituted, in the case of premises falling within head (1) supra, references to the owner of the building and, in the case of premises falling within head (2) supra, references to the persons who between them own the building: s 28A, Sch 2 Pt II para 3(1), (2), (3) (s 28A and Sch 2 both added by the Fire Safety and Safety of Places of Sport Act 1987 s 16, Sch 1). As to factory premises, office premises, railway premises or shop premises see PARA 83 note 16 ante.

15 Fire Precautions Act 1971 s 12(8)(b)(i). For the meaning of 'relevant building' see PARA 111 note 5 ante.

16 Ibid s 12(8)(b)(ii).

17 Ibid s 12(8)(b).

## UPDATE

### 81-149 Fire Precautions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 111-122 Contents of fire certificate ... Effect of modifications

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(ii) Modifications in relation to Fire Precautions Regulations/122. Effect of modifications.

## (ii) Modifications in relation to Fire Precautions Regulations

### 122. Effect of modifications.

Certain provisions of the Fire Precautions Act 1971<sup>1</sup> have effect in relation to the Fire Precautions (Workplace) Regulations 1997<sup>2</sup> as if the requirements of the workplace fire precautions legislation were requirements of regulations made under a certain provision of the Fire Precautions Act 1971<sup>3</sup>; and as if any reference (however expressed) in those provisions<sup>4</sup> to:

- 141 (1) premises<sup>5</sup> included a reference to a workplace, other than an excepted workplace<sup>6</sup>;
- 142 (2) premises to which regulations made under that certain provision<sup>7</sup> apply included a reference to a workplace in connection with which obligations are imposed by the workplace fire precautions legislation<sup>8</sup>;
- 143 (3) an owner or occupier of premises included a reference to an employer or other person on whom obligations are imposed under the workplace fire precautions legislation in respect of a workplace<sup>9</sup>; and
- 144 (4) the Fire Precautions Act 1971 included a reference to the workplace fire precautions legislation<sup>10</sup>.

A fire certificate issued<sup>11</sup> or deemed to have been issued<sup>12</sup> does not have effect to the extent that it would require a person to contravene any provision of the workplace fire precautions legislation; and the fire authority may amend the certificate to the extent necessary to prevent the certificate requiring such contravention<sup>13</sup>.

<sup>1</sup> ie the Fire Precautions Act 1971 s 16 (see PARA 118 ante), s 19 (as amended) (see PARA 141 post), s 20 (see PARA 141 post), s 21 (as amended) (see PARA 141 post), s 22(1) (as amended) (see PARA 143 post), s 23 (see PARA 145 post), s 25 (see PARA 146 post), s 26 (as amended) (see PARA 116 ante), s 27 (as amended) (see PARA 116 post), s 27A (as added) (see PARA 144 post), s 30 (as amended) (see PARA 147 post), s 32 (see PARA 147 post), s 38 (see PARA 113 ante), and s 43 (as amended): see the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17(2). The 'workplace fire precautions legislation' means:

<sup>10</sup> (1) Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, Pt II (regs 3-6) (as amended) (see PARA 133 et seq post) (regs 2(1), 9(2)(a)) (reg 9(2)(a) substituted by SI 1999/1877) except in so far as the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, Pt I (regs 1-2) (as amended) (see PARA 131 et seq post) applies to:

1. (a) any workplace which is or is in or on a ship within the meaning of the Merchant Shipping Act 1995 s 313(1) (see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 229) when such a ship is in the course of construction or is in the course of repair by persons who include persons other than the master and crew of the ship (Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, regs 2(1), 9(2)(a)(i)) (as so substituted);

1

2. (b) any workplace, other than a building on the surface at a mine, to the extent that it comprises premises to which the Fire Certificates (Special Premises) Regulations 1976, SI 1976/2003 (as amended) (see PARA 96 et seq ante), apply (Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, regs 2(1), 9(2)(a)(ii)) (as so substituted); and

2

- 11 (2) the Management of Health and Safety at Work Regulations 1999, SI 1999/3242, regs 1-5, 7-12, 13(2), (3) (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARAS 428-443) in so far as those regulations:
3. (a) impose requirements concerning general fire precautions to be taken or observed by an employer (Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, regs 2(1), 9(2)(b)(i)) (reg 9(2)(b) amended by SI 1999/3242); and  
3
4. (b) have effect in relation to a workplace in Great Britain other than an excepted workplace (Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, regs 2(1), 9(2)(b)(ii)) (as so amended).  
4

For the meaning of 'Great Britain' see PARA 3 note 2 ante.

'General fire precautions' means measures which are to be taken or observed in relation to the risk to the safety of employees in case of fire in a workplace, other than any special precautions in connection with the carrying on of any manufacturing process: reg 9(2)(b) (as so amended).

The following sections of the Fire Precautions Act 1971 referred to in Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17(2) have effect for the purposes of the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), with the following modifications:

- 12 (i) the Fire Precautions Act 1971 s 16 has effect as if the references in it to a designated use included a reference to use as a workplace to which the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, Pt II (regs 3-6) (as amended) applies (reg 17(3)(a));
- 13 (ii) the Fire Precautions Act 1971 s 22(1) (as amended) has effect as if s 22(1)(a) and (b) were omitted (Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17(3)(b));
- 14 (iii) the Fire Precautions Act 1971 s 25 only has effect in connection with ss 21, 22(1) (both as amended) as applied by the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17 (reg 17(3)(c)); and
- 15 (iv) the Fire Precautions Act 1971 s 43 (as amended) has effect only for the purposes of the provisions of the Act applied by Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17 (reg 17(3)(d)).

2 le the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended): see PARA 131 et seq post.

3 Ibid reg 17(1)(a). The provision of the Fire Precautions Act 1971 referred to in the text is s 12 (as amended): see PARAS 119-121 ante.

4 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17(1)(b). As to the provisions referred to in the text see note 1 supra.

5 For these purposes, 'premises' includes any place and, in particular, includes: (1) any vehicle, vessel, aircraft or hovercraft; (2) any installation on land (including the foreshore and other land intermittently covered by water), any offshore installation, and any other installation (whether floating, or resting on the seabed or its subsoil, or resting on other land covered with water or its subsoil; (3) any tent or movable structure: *ibid* reg 2(1).

6 Ibid reg 17(1)(b)(i).

7 le the Fire Precautions Act 1971 s 12 (as amended): see PARAS 119-121 ante.

8 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17(1)(b)(ii).

9 Ibid reg 17(1)(b)(iii).

10 Ibid reg 17(1)(b)(iv). Regulation 17 (as amended) only binds the Crown to the extent that it applies the Fire Precautions Act 1971 s 19 (as amended) (see PARA 141 post), s 21 (as amended) (see PARA 141 post) and s 32 (see PARA 147 post), and then only in so far as those provisions apply to premises and workplaces owned by the Crown but not occupied by it: Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 18(2).

11 le under the Fire Precautions Act 1971.

12 le under the Fire Precautions Act 1971 Act by virtue of the Health and Safety at Work etc Act 1974 s 78(10), Sch 8 para 2: see PARA 83 text and notes 18-23 ante.

13 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17(4) (amended by SI 1999/1877). Where an amendment to a fire certificate is made on the application of any person affected by the certificate and is confined to requirements of the kind referred to in the Fire Precautions Act 1971 s 6(1) (see PARA 111 ante), the applicant must pay to the authority such fee as it may determine, not exceeding an amount which represents the cost to the authority of the work reasonably done by it for the purposes of the amendment of the certificate, other than the cost of any inspection of the premises: Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17(5).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **111-122 Contents of fire certificate ... Effect of modifications**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, are replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.



Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(iii) Sub-surface Railway Stations/123. Application of regulations.

### (iii) Sub-surface Railway Stations

#### 123. Application of regulations.

The Fire Precautions (Sub-surface Railway Stations) Regulations 1989<sup>1</sup> which provide for fire precautions to be taken in certain underground and low-level railway stations used by members of the public, came into force on 18 September 1989, with the exception of certain provisions<sup>2</sup> which have since been brought into force<sup>3</sup>.

The regulations apply to any premises used as a railway station to which members of the public have access (whether on payment or otherwise) and in which any railway platform is an enclosed underground platform<sup>4</sup>.

1     Ie the Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401 (as amended), which were made under the power conferred upon the Secretary of State by the Fire Precautions Act 1971 s 12 (as amended): see PARAS 119-121 ante. As to the Secretary of State see PARA 10 ante.

2     Ie the Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401, regs 5(4), (5), 6(3), 6(4), (6), (8), 7(1), (2), 8(3): see reg 1(3); and note 3 infra.

3     Ibid reg 1(2). Regulations 6(3), 7(1), (2) came into force on 1 January 1990; regs 5(4), (5), 6(4), (6), (8) came into force on 1 January 1991; and reg 8(3) came into force on 1 January 1996: reg 1(3).

4     Ibid reg 3(1). For these purposes, a railway platform (1) is an enclosed platform if the platform and the permanent way to which it is adjacent (whether with or without one or more other railway platforms) are situated wholly or mainly in a tunnel or wholly or mainly within or under any building (reg 3(2)(a)); and (2) is an underground platform if the level of the roof or ceiling immediately above the platform and the permanent way to which it is adjacent is below the level of the surface of the ground adjacent to any exit from the railway station providing a means of escape from the station in case of fire; and a railway platform is regarded as situated mainly in a tunnel or mainly within or under a building if the platform and the permanent way to which it is adjacent are covered by any part of a tunnel or building for more than half the length of the platform (reg 3(2)(b)). In their application to the premises referred to in reg 3(1), the Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401 (as amended), apply, subject to reg 13(4) (see PARA 130 post), to any part of the premises which is owned or occupied by the Crown: reg 3(3).

#### UPDATE

#### 81-149 Fire Precautions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

#### 123-130 Sub-surface railway stations

SI 1989/1401, in relation to England, revoked and partially replaced: Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009, SI 2009/782. The 2009

Regulations contain requirements (1) to lock doors giving access to fire escapes (reg 4); (2) to provide means for fighting fires and detection and warning systems for certain parts of stations (regs 5, 6); (3) for stations to be kept clear of combustible refuse and for areas for storing such refuse to be separated by fire-resisting construction (reg 7); (4) in relation to materials used in the internal construction of station premises (reg 8); and (5) in relation to the instruction and training of members of staff working in station premises and the supervision of persons other than members of staff working in such premises (regs 9, 10). The regulations also specify exemptions in certain circumstances: reg 11. As to general fire precautions governing sub-surface railway stations see Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541; and PARA 81 et seq.

### **123 Application of regulations**

NOTE 1--1971 Act replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(iii) Sub-surface Railway Stations/124. Means of escape and for fighting fire.

#### **124. Means of escape and for fighting fire.**

All parts of station premises providing means of escape from the premises in case of fire, including railway platforms, escalators, travolators and lifts, must be kept free from obstruction at all times when members of the public have access to the premises and must be so maintained as to secure that they can be safely used as such means of escape at those times<sup>1</sup>. All parts of station premises must be kept clear of any accumulation of combustible refuse or other combustible matter, and any combustible refuse stored in the premises pending its disposal must be stored in an area set aside for that purpose<sup>2</sup>.

At all times when members of the public have access to station premises, and at other times when persons are at work in the premises, the door of, or barrier in, any doorway or exit through which a person might have to pass in order to leave the premises must not be so locked or fastened that it cannot be easily and immediately opened in case of fire in the premises<sup>3</sup>. Where a door in station premises is designed to be held open by an electromagnetic or electromechanical device the door and the means for holding open and closing the door must be maintained in efficient working order and the door must not be held open by any device or object other than the electromagnetic or electromechanical device<sup>4</sup>.

In any passage or other area affording a means of escape from station premises in case of fire or giving access to such a means of escape, every door of a doorway which does not form part of, or give access to, the means of escape must be kept locked at all times when the part of the premises to which the doorway gives access is neither in use by any person who is at work in the premises nor available for use by members of the public<sup>5</sup>. Every doorway or other exit affording a means of escape from the station premises in case of fire or giving access to such a means of escape, including the means of exit in ordinary use by members of the public, must be distinctively and conspicuously marked by a notice indicating that it is an ordinary means of exit or (as the case may be) an emergency exit from the premises<sup>6</sup>.

Station premises must be provided with such means for fighting fire as are appropriate and adequate in relation to the risk to persons in case of fire in the premises<sup>7</sup>. The location of each fire hydrant in station premises must be indicated by a distinctive and conspicuous notice in a position above or adjacent to the fire hydrant<sup>8</sup>. The outlet connection of every fire hydrant in station premises must be of such a type as is compatible with the type of attachment on hoses used by the fire brigade for the purpose of drawing water from fire hydrant<sup>9</sup>. The following parts of station premises must be provided with a means for fighting fire comprising a system which is activated automatically in such a part of the premises in the event of any outbreak of fire in that part of the premises<sup>10</sup>:

- 145 (1) a machine room, other than a machine room in which machinery for operating an escalator, travolator or lift is installed<sup>11</sup>;
- 146 (2) any storage area, including an area set aside for storing refuse pending its disposal<sup>12</sup>;
- 147 (3) any part of the premises used as a shop<sup>13</sup>.

All means for fighting fire in station premises must be maintained in efficient working order and all portable equipment for fighting fire in the premises must be so placed as to be readily available for use<sup>14</sup>.

When any person employed to work in station premises reasonably suspects that there is an outbreak of fire in the premises, immediate steps must be taken to activate the system for giving warning in case of fire<sup>15</sup> and to call for the assistance of the fire brigade<sup>16</sup>. A plan of the station premises suitable for use by members of the fire brigade when attending the premises for fire-fighting purposes must be kept in, or affixed to, a part of the premises where it is accessible to members of the fire brigade in such an event<sup>17</sup>.

1 Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401, reg 4(1). 'Travolator' includes any mechanically operated moving footway other than a escalator: reg 2.

2 Ibid reg 4(2).

3 Ibid reg 4(3).

4 Ibid reg 4(4). Regulation 4(4) applies to an electromagnetic or electromechanical device which allows a door held open by it to be operated manually at all times and to close automatically on each or any of the following occurrences: (1) the operation of a system for giving warning in case of fire (reg 4(5)(a)); (2) the manual operation of a switch for releasing the device (reg 4(5)(b)); (3) a failure in the supply of electricity to the device (reg 4(5)(c)). A record must be made of all work of maintenance done in station premises in pursuance of reg 4(4): reg 11(1)(a). A record made under reg 11(1) in relation to station premises must be kept in the premises for a period of not less than three years from the date on which it was made: reg 11(2). As to contravention of reg 11 see PARA 130 post.

5 Ibid reg 4(6).

6 Ibid reg 4(7). All parts of station premises forming part of the means of escape from the premises in case of fire must be provided with artificial lighting capable of providing sufficient illumination of those parts of the premises and any notice required by reg 4(7) to enable persons in the premises to leave the premises safely in case of fire: reg 4(8). The lighting required by reg 4(8) must be provided by electricity supplied from two independent sources of supply so controlled that, so far as is reasonably practicable, the requirements of reg 4(8) continue to be met in the event of any failure in the supply of electricity from one of the two sources of supply: reg 4(9). As to contravention of reg 4 see PARA 130 post.

7 Ibid reg 5(1).

8 Ibid reg 5(2).

9 Ibid reg 5(3). 'Fire brigade' means a fire brigade maintained by a fire authority: reg 2. As to fire brigades see PARA 35 et seq ante. Every escalator and travolator in station premises must be provided with a means for fighting fire comprising a water sprinkler system which is activated automatically on the operation of the means for detecting fire with which the escalator or travolator is provided under reg 6(1) (see PARA 125 post): reg 5(4).

10 Ibid reg 5(5).

11 Ibid reg 5(5)(a). 'Machine room' means a room containing any electricity generator, transformer or switchgear, or in which any machinery for operating an escalator, travolator or lift is installed: reg 2.

12 Ibid reg 5(5)(b).

13 Ibid reg 5(5)(c).

14 Ibid reg 5(6). A record must be made of all work of maintenance done in station premises in pursuance of reg 5(6): reg 11(1)(a).

15 Ie the system referred to in ibid reg 6(4): see PARA 125 post.

16 Ibid reg 5(7).

17 Ibid reg 5(8). As to contravention of reg 5 see PARA 130 post.

## UPDATE

### 81-149 Fire Precautions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **123-130 Sub-surface railway stations**

SI 1989/1401, in relation to England, revoked and partially replaced: Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009, SI 2009/782. The 2009 Regulations contain requirements (1) to lock doors giving access to fire escapes (reg 4); (2) to provide means for fighting fires and detection and warning systems for certain parts of stations (regs 5, 6); (3) for stations to be kept clear of combustible refuse and for areas for storing such refuse to be separated by fire-resisting construction (reg 7); (4) in relation to materials used in the internal construction of station premises (reg 8); and (5) in relation to the instruction and training of members of staff working in station premises and the supervision of persons other than members of staff working in such premises (regs 9, 10). The regulations also specify exemptions in certain circumstances: reg 11. As to general fire precautions governing sub-surface railway stations see Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541; and PARA 81 et seq.

### **124 Means of escape and for fighting fire**

NOTES 4, 6--As to the supply of electricity see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1033 post.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(iii) Sub-surface Railway Stations/125. Means for detecting fire and giving warning in case of fire.

### **125. Means for detecting fire and giving warning in case of fire.**

Every escalator and travolator in station premises must be provided with a means for detecting fire comprising a linear heat detector system<sup>1</sup>. Any machine room in station premises in which machinery for operating an escalator, travolator or lift is installed must be provided with a means for detecting the presence of smoke in the room<sup>2</sup>. The following parts of station premises must be provided with a means for detecting fire which is activated automatically in case of fire in such a part of the premises<sup>3</sup>:

- 148 (1) every part of the premises required<sup>4</sup> to be provided with the means for fighting fire<sup>5</sup>;
- 149 (2) any office which is not separated from other parts of the premises by fire-resisting construction<sup>6</sup>;
- 150 (3) any staff room for persons employed to work in the premises<sup>7</sup>.

The station premises must be provided with an electrically operated system for giving warning in case of fire<sup>8</sup> which is designed to transmit any such warning to a place where it can be received by the station manager or by some other person employed by the occupier of the premises<sup>9</sup> and which is capable of being activated both by manual operation at call points in the premises, including call points for use by members of the public, and by any of the means for detecting fire or the presence of smoke in the premises<sup>10</sup>. Where a call point for a system for giving warning in case of fire is situated in a part of station premises to which members of the public have access, there must be displayed at or near the call point a notice giving information as to how to use the call point to activate the system<sup>11</sup>.

The station premises must be provided with a public address system for use by or on behalf of the occupier of the premises to give warning of fire to members of the public in the premises and advise them of the action to be taken by them in case of fire<sup>12</sup>. All means for detecting fire and for giving warning in case of fire in station premises must be maintained in efficient working order<sup>13</sup>. In station premises arrangements must be made to secure that in case of fire the station manager and any person employed to work as a member of the staff of the station premises who is on duty in any part of the premises can communicate with each other by personal radio or by telephone<sup>14</sup>.

1 Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401, reg 6(1). For the meaning of 'travolator' see PARA 124 note 1 ante.

2 Ibid reg 6(2).

3 Ibid reg 6(3).

4 Ie required by ibid reg 5(5): see PARA 124 ante.

5 Ibid reg 6(3)(a). The reference in the text to the means for fighting fire is to the means referred to in reg 5(5): see PARA 124 ante.

6 Ibid reg 6(3)(b). The reference in the text to fire-resisting construction is to such construction within the meaning of reg 7(6): see PARA 126 post.

7 Ibid reg 6(3)(c).

8 Ibid reg 6(4).

9 Ibid reg 6(4)(a).

10 Ibid reg 6(4)(b). The reference in the text to the means for detecting fire or the presence of smoke in the premises is to any of such means referred to in reg 6(1)-(3): see the text and notes 1-7 supra.

11 Ibid reg 6(5).

12 Ibid reg 6(6).

13 Ibid reg 6(7). A record must be made of all work of maintenance done in station premises in pursuance of reg 6(7): reg 11(1)(a). As to the keeping of records see PARA 124 note 4 ante. As to contravention of reg 11 see PARA 130 post.

14 Ibid reg 6(8). As to contravention of reg 6 see PARA 130 post.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **123-130 Sub-surface railway stations**

SI 1989/1401, in relation to England, revoked and partially replaced: Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009, SI 2009/782. The 2009 Regulations contain requirements (1) to lock doors giving access to fire escapes (reg 4); (2) to provide means for fighting fires and detection and warning systems for certain parts of stations (regs 5, 6); (3) for stations to be kept clear of combustible refuse and for areas for storing such refuse to be separated by fire-resisting construction (reg 7); (4) in relation to materials used in the internal construction of station premises (reg 8); and (5) in relation to the instruction and training of members of staff working in station premises and the supervision of persons other than members of staff working in such premises (regs 9, 10). The regulations also specify exemptions in certain circumstances: reg 11. As to general fire precautions governing sub-surface railway stations see Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541; and PARA 81 et seq.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(iii) Sub-surface Railway Stations/126. Fire resistance.

## **126. Fire resistance.**

Certain parts of station premises<sup>1</sup> must, so far as is reasonably practicable, be separated by fire-resisting construction<sup>2</sup> from other parts of the premises, including any other part of such premises<sup>3</sup>.

Any explosive or highly flammable materials kept in station premises must be stored in an area separated from other parts of the premises by fire-resisting construction<sup>4</sup>. An area set aside for storing combustible refuse in station premises pending its disposal must be separated from other parts of the premises by fire-resisting construction<sup>5</sup>.

Any material which is used on or after 18 September 1989<sup>6</sup> in the construction of an internal wall or ceiling in any part of station premises to which members of the public have access must be non-combustible<sup>7</sup> or have low heat emission<sup>8</sup>, and any material which is applied on or after that date to the surface of an internal wall or ceiling in such a part of the premises must offer adequate resistance to the spread of flame over the surface of the material<sup>9</sup> and have, if ignited, a reasonable rate of heat release<sup>10</sup>. The material of which any balustrade, decking or skirting board of an escalator or travolator in station premises is constructed, and the material of which any display panel for advertisements or notices in an escalator shaft in the premises is constructed, must offer adequate resistance to the spread of flame over the surface of the material and must have, if ignited, a reasonable rate of heat release<sup>11</sup>. The material of which the treads and risers in the steps of any escalator in station premises are constructed must offer adequate resistance to the spread of flame over the surface of the material and must have, if ignited, a reasonable rate of heat release<sup>12</sup>.

1    Ie those parts of station premises to which Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401, reg 7 applies, namely: (1) a machine room, any storage area other than an area referred to in reg 7(3) (see the text and note 4 infra) or reg 7(4) (see the text and note 5 infra); and (2) a staff room for persons employed to work in the premises: reg 7(2).

2    Any reference in *ibid* reg 7 to fire-resisting construction is a reference to construction of such a nature as to be capable of providing resistance to fire for a period of not less than one hour: reg 7(6).

3    See *ibid* reg 7(1).

4    *Ibid* reg 7(3).

5    *Ibid* reg 7(4). As to where a door forms part of any fire-resisting construction required by reg 7 see reg 7(5). As to contravention of reg 7 see *PARA 130 post*.

6    Ie the date on which certain of the provisions of the Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401 (as amended), came into force: see *PARA 123 ante*.

7    As to what is regarded as non-combustible material see Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401, reg 8(4)(a).

8    As to what is regarded as material having low heat emission see *ibid* reg 8(4)(b).

9    As to what is regarded as material offering resistance to the spread of flame over its surface see *ibid* reg 8(4)(c).

10   *Ibid* reg 8(1).

11   *Ibid* reg 8(2). For the meaning of 'travolator' see *PARA 124 note 1 ante*.



12 Ibid reg 8(3). As to contravention of reg 8 see PARA 130 post.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **123-130 Sub-surface railway stations**

SI 1989/1401, in relation to England, revoked and partially replaced: Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009, SI 2009/782. The 2009 Regulations contain requirements (1) to lock doors giving access to fire escapes (reg 4); (2) to provide means for fighting fires and detection and warning systems for certain parts of stations (regs 5, 6); (3) for stations to be kept clear of combustible refuse and for areas for storing such refuse to be separated by fire-resisting construction (reg 7); (4) in relation to materials used in the internal construction of station premises (reg 8); and (5) in relation to the instruction and training of members of staff working in station premises and the supervision of persons other than members of staff working in such premises (regs 9, 10). The regulations also specify exemptions in certain circumstances: reg 11. As to general fire precautions governing sub-surface railway stations see Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541; and PARA 81 et seq.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(iii) Sub-surface Railway Stations/127. Instruction and training of persons working in premises.

## **127. Instruction and training of persons working in premises.**

Every person employed to work in station premises<sup>1</sup> as a member of the staff of the station premises must be given instruction in the fire precautions to be taken or observed there, so far as those precautions relate to his duties<sup>2</sup>, including instruction as to:

- 151 (1) the means of escape from the premises in case of fire<sup>3</sup>;
- 152 (2) the action to be taken by him in case of fire in the premises<sup>4</sup>;
- 153 (3) the location of, and method of operating, equipment provided in the premises for fighting fire<sup>5</sup>; and
- 154 (4) the location and use of the means for giving warning in case of fire in the premises<sup>6</sup>,

and he must be given such further instruction at least once in every period of seven months as is necessary to ensure that he is familiar with those matters<sup>7</sup>.

No person employed to work in station premises may be employed as the station manager<sup>8</sup> unless he has been given instruction in the matters specified in heads (1) and (2) above<sup>9</sup> and, in addition, instruction:

- 155 (a) as to supervising and controlling action to be taken in case of fire in the premises by other persons employed to work there as members of the staff of the station premises<sup>10</sup>;
- 156 (b) in arrangements for calling for the assistance of the fire brigade and securing that members of the fire brigade are directed to the source of any fire in the premises<sup>11</sup>;
- 157 (c) as to taking action in case of fire in the premises to prevent the entry of members of the public to the premises<sup>12</sup>;
- 158 (d) in the use of the means for advising members of the public in the premises on the action to be taken by them in case of fire in the premises<sup>13</sup>; and
- 159 (e) in arrangements for securing that the means of escape from the premises can be immediately used in case of fire and for enabling persons to leave the premises by train in case of fire<sup>14</sup>.

A person who is employed to work in station premises otherwise than as a member of the staff of the station premises must be given instruction in the fire precautions to be observed by him in the course of his work in the premises and the action to be taken by him in case of fire in the premises<sup>15</sup>.

A fire drill for persons employed to work in station premises as members of the staff of the station premises must be held there not less than once in every period of six months for the purpose of providing those persons with training in the action to be taken in case of fire in the premises<sup>16</sup>. The attendance at a fire drill of such persons<sup>17</sup> must be so organised as to secure that not less than one third of the number of those persons at work in the station premises at any one time have attended a fire drill in the preceding six months<sup>18</sup>.

1 'Station premises' means the premises to which the Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401 (as amended), apply by virtue of reg 3 (see PARA 123 ante): reg 2.

2 Ibid reg 9(1). A record must be made of the occasions on which instruction is given to each person employed to work in the premises in pursuance of reg 9: reg 11(1)(b). As to the keeping of records see PARA 124 note 4 ante. As to contravention of reg 11 see PARA 130 post.

3 Ibid reg 9(1)(a).

4 Ibid reg 9(1)(b).

5 Ibid reg 9(1)(c).

6 Ibid reg 9(1)(d).

7 Ibid reg 9(1).

8 'Station manager' means the person employed to work in station premises who is for the time being in charge of the premises: ibid reg 2.

9 Ie in ibid reg 9(1): see the text and notes 1-7 supra.

10 Ibid reg 9(2)(a).

11 Ibid reg 9(2)(b). As to fire brigades see PARA 35 et seq ante.

12 Ibid reg 9(2)(c).

13 Ibid reg 9(2)(d).

14 Ibid reg 9(2)(e).

15 Ibid reg 9(3).

16 Ibid reg 9(4). A record must be made of the fire drills held in the premises in pursuance of reg 9 and of the names of the persons attending each fire drill: reg 11(1)(c).

17 Ie the persons referred to in ibid reg 9(4): see the text and note 16 supra.

18 Ibid reg 9(5). Each fire drill in station premises must be held at a time when members of the public have access to the premises: reg 9(6). As to contravention of reg 9 see PARA 130 post.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **123-130 Sub-surface railway stations**

SI 1989/1401, in relation to England, revoked and partially replaced: Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009, SI 2009/782. The 2009 Regulations contain requirements (1) to lock doors giving access to fire escapes (reg 4); (2) to provide means for fighting fires and detection and warning systems for certain parts of stations (regs 5, 6); (3) for stations to be kept clear of combustible refuse and for areas for storing such refuse to be separated by fire-resisting construction (reg 7); (4) in relation to materials used in the internal construction of station premises (reg 8); and (5) in relation to the instruction and training of members

of staff working in station premises and the supervision of persons other than members of staff working in such premises (regs 9, 10). The regulations also specify exemptions in certain circumstances: reg 11. As to general fire precautions governing sub-surface railway stations see Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541; and PARA 81 et seq.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(iii) Sub-surface Railway Stations/128. Additional precautions to be taken.

### **128. Additional precautions to be taken.**

The occupier of station premises<sup>1</sup> must prepare and keep up to date an emergency plan setting out details of the action to be taken in the event of an outbreak of fire in the premises by persons employed to work in the premises and the procedure to be followed for the evacuation of members of the public from the premises in that event<sup>2</sup>.

All practicable steps must be taken to prevent smoking by persons in any part of station premises which is a machine room<sup>3</sup>, storage area or part of the premises used as a shop or to which members of the public have access<sup>4</sup>. All practicable steps must be taken to supervise the carrying out by persons other than members of the staff of station premises of any work of construction or maintenance in the premises which presents a risk to persons in case of fire<sup>5</sup>.

The periods of duty of the persons employed to work in station premises as members of the staff of the station premises must be so arranged as to secure that not less than two of those persons are present on duty in the premises at all times when members of the public have access to the premises<sup>6</sup>.

1 For the meaning of 'station premises' see PARA 127 note 1 ante.

2 Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401, reg 10(1).

3 For the meaning of 'machine room' see PARA 124 note 11 ante.

4 Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401, reg 10(2).

5 Ibid reg 10(3).

6 Ibid reg 10(4). As to contravention of reg 10 see PARA 130 post.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **123-130 Sub-surface railway stations**

SI 1989/1401, in relation to England, revoked and partially replaced: Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009, SI 2009/782. The 2009 Regulations contain requirements (1) to lock doors giving access to fire escapes (reg 4); (2) to provide means for fighting fires and detection and warning systems for certain parts of stations (regs 5, 6); (3) for stations to be kept clear of combustible refuse and for areas for storing such refuse to be separated by fire-resisting

construction (reg 7); (4) in relation to materials used in the internal construction of station premises (reg 8); and (5) in relation to the instruction and training of members of staff working in station premises and the supervision of persons other than members of staff working in such premises (regs 9, 10). The regulations also specify exemptions in certain circumstances: reg 11. As to general fire precautions governing sub-surface railway stations see Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541; and PARA 81 et seq.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(iii) Sub-surface Railway Stations/129. Exemption from requirements.

### **129. Exemption from requirements.**

Where a fire authority is satisfied in respect of any particular station premises<sup>1</sup> that compliance with a requirement of certain provisions of the Fire Precautions (Sub-surface Railway Stations) Regulations<sup>2</sup> is inappropriate, unnecessary or not reasonably practicable, it may by notice in writing to the occupier of the premises grant exemption from compliance with the requirement to such extent as is reasonable having regard to all the circumstances of the case and in particular to the risk in case of fire to persons in the premises<sup>3</sup>.

A fire authority may grant an exemption<sup>4</sup> subject to such conditions as may be specified in the notice granting the exemption and the authority may by notice in writing to the occupier of the premises withdraw the exemption if the occupier fails to comply with any condition subject to which the exemption was granted<sup>5</sup>.

<sup>1</sup> For the meaning of 'station premises' see PARA 127 note 1 ante. As to fire authorities see PARA 17 et seq ante.

<sup>2</sup> I.e. the Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401, reg 4(1), (3) (see PARA 124 ante), reg 5(4), (5) (see PARA 124 ante), reg 6(1), (3) (para 125 ante), reg 7(1) (see PARA 126 ante), reg 8(2), (3) (see PARA 126 ante), reg 10(2), (4) (see PARA 128 ante) and reg 11(2) (see PARA 124 note 4 ante): see reg 12(1) (amended by SI 1994/2184).

<sup>3</sup> Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401, reg 12(1). However, a fire authority may not exercise its powers under reg 12(1) in such a way that there would be in effect at the same time in respect of particular station premises exemptions from requirements of reg 5(4) (see PARA 124 ante) or 6(1) (see PARA 125 ante) and from requirements of reg 8(3) (see PARA 126 ante): reg 12(1A) (added by SI 1994/2184).

<sup>4</sup> I.e. under Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401, reg 12(1) (as amended): see the text and notes 1-3 supra.

<sup>5</sup> Ibid reg 12(2).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **123-130 Sub-surface railway stations**

SI 1989/1401, in relation to England, revoked and partially replaced: Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009, SI 2009/782. The 2009 Regulations contain requirements (1) to lock doors giving access to fire escapes (reg

4); (2) to provide means for fighting fires and detection and warning systems for certain parts of stations (regs 5, 6); (3) for stations to be kept clear of combustible refuse and for areas for storing such refuse to be separated by fire-resisting construction (reg 7); (4) in relation to materials used in the internal construction of station premises (reg 8); and (5) in relation to the instruction and training of members of staff working in station premises and the supervision of persons other than members of staff working in such premises (regs 9, 10). The regulations also specify exemptions in certain circumstances: reg 11. As to general fire precautions governing sub-surface railway stations see Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541; and PARA 81 et seq.

### **129 Exemption from requirements**

TEXT AND NOTES--References to a fire authority are now to a fire and rescue authority: SI 1989/1401 reg 12 (amended by SI 2005/2929 (Wales)).



Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(iii) Sub-surface Railway Stations/130. Liability of occupier.

### **130. Liability of occupier.**

The requirements of the Fire Precautions (Sub-surface Railway Stations) Regulations<sup>1</sup> are imposed on the occupier of the station premises<sup>2</sup> and, subject to any exemption granted (and not withdrawn)<sup>3</sup> the occupier of the premises is responsible for any contravention of them<sup>4</sup>.

1    Ie the Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401, regs 4-11: see reg 13(1).

2    Ie to which ibid regs 4-11 apply: see PARAS 124-128 ante. For the meaning of 'station premises' see PARA 127 note 1 ante.

3    Ie under ibid reg 12 (as amended): see PARA 129 ante.

4    See ibid reg 13(1). If any provision of regs 4-11 (see PARAS 124-128 ante) is contravened the person who under reg 13(1) is responsible for the contravention is guilty of an offence under the Fire Precautions Act 1971 s 12 (as amended) (see PARA 120 ante): Fire Precautions (Sub-surface Railway Stations) Regulations 1989, SI 1989/1401, reg 13(3). Regulation 13(3) does not apply to the Crown: reg 3(4).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **123-130 Sub-surface railway stations**

SI 1989/1401, in relation to England, revoked and partially replaced: Fire Precautions (Sub-surface Railway Stations) (England) Regulations 2009, SI 2009/782. The 2009 Regulations contain requirements (1) to lock doors giving access to fire escapes (reg 4); (2) to provide means for fighting fires and detection and warning systems for certain parts of stations (regs 5, 6); (3) for stations to be kept clear of combustible refuse and for areas for storing such refuse to be separated by fire-resisting construction (reg 7); (4) in relation to materials used in the internal construction of station premises (reg 8); and (5) in relation to the instruction and training of members of staff working in station premises and the supervision of persons other than members of staff working in such premises (regs 9, 10). The regulations also specify exemptions in certain circumstances: reg 11. As to general fire precautions governing sub-surface railway stations see Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541; and PARA 81 et seq.

### **130 Liability of occupier**

NOTE 4--1971 Act replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(iv) The Workplace/131. Application of regulations.

## **(iv) The Workplace**

### **131. Application of regulations.**

The Fire Precautions (Workplace) Regulations 1997<sup>1</sup> came into force on 1 December 1997<sup>2</sup> and extend to Great Britain<sup>3</sup>. The regulations impose requirements in respect of fire safety on every workplace other than an excepted workplace<sup>4</sup>.

Subject to certain exceptions<sup>5</sup> the regulations bind the Crown<sup>6</sup> and, to the extent that they do so, the regulations, together with any provision of the Fire Precautions Act 1971 applied by the regulations<sup>7</sup>, have effect, in the case of workplaces occupied solely for the purposes of the armed forces of the Crown, with the substitution, for any reference to a fire authority, of a reference to the fire service maintained by the Secretary of State for Defence<sup>8</sup>; and in any other case, a reference to a fire inspector or any person authorised by the Secretary of State to act<sup>9</sup>. Nothing in the regulations is to be taken to authorise the entry of any premises occupied by the Crown<sup>10</sup>.

The regulations apply to a visiting force or an international headquarters or defence organisation designated for the purposes of the International Headquarters and Defence Organisations Act 1964<sup>11</sup> only to the extent that they apply to the Crown<sup>12</sup>; and with the substitution, for any reference in the regulations (and in any provision of the Fire Precautions Act 1971 applied by the regulations) to a fire authority, of a reference to the fire service maintained by the Secretary of State for Defence<sup>13</sup>.

Where the regulations apply to a workplace over which the United Kingdom Atomic Energy Authority has control<sup>14</sup>, any reference to a fire authority in the regulations (and in any provision of the Fire Precautions Act 1971 applied by the regulations<sup>15</sup>) is to be substituted by a reference to a fire inspector<sup>16</sup> or any person authorised by the Secretary of State to act for these purposes<sup>17</sup>.

Certain provisions of the Fire Precautions Act 1971<sup>18</sup> have effect in relation to the regulations as if the requirements of the workplace fire precautions legislation<sup>19</sup> were requirements of regulations made under a certain provision of the Fire Precautions Act 1971<sup>20</sup>.

1    Ie the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended): see PARA 132 et seq post.

2    Ibid reg 1(1).

3    See ibid reg 1(2). For the meaning of 'Great Britain' see PARA 3 note 2 ante.

4    As to excepted workplaces see PARA 133 post.

5    Ie with the exception of Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 10 (as amended) (see PARA 136 post), reg 11 (as amended) (see PARA 137 post), reg 13 (as amended) (see PARA 138 post), reg 14 (as amended) (see PARA 139 post) and reg 15 (as amended) (see PARA 139 post).

6    Ibid reg 18(1) (amended by SI 1999/1877).

7    As to these provisions see the text and notes 18-19 infra.

8    Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 18(4)(a).

9 Ibid reg 18(4)(b). The reference in the text to a person authorised by the Secretary of State to act is to one authorised to act for the purpose of reg 18 (as amended): see reg 18(4)(b). Any power exercisable by virtue of reg 18(4) by a fire inspector is exercisable also by any person if and so far as he is authorised in writing by such an inspector to exercise that power; but a fire inspector must not so authorise an officer of a fire brigade except with the consent of the fire authority who maintain that brigade: reg 18(5). For the purposes of reg 18 (as amended) the occupation of any premises by the Corporate Officer of the House of Lords for the purposes of that House, by the Corporate Officer of the House of Commons for the purpose of that House, or by those Corporate Officers acting jointly for the purposes of both Houses is to be regarded as occupation by the Crown (reg 18(5A)(a)) (reg 18(5A) added by SI 1999/1877); and any premises in which either or both of those Corporate Officers has or have an interest which is that of an owner are to be regarded as premises owned by the Crown (Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 18(5A)(b)) (as so added). For the purposes of reg 18 (as amended), 'fire inspector' means an inspector or assistant inspector appointed under the Fire Services Act 1947 s 24 (see PARA 11 ante); Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 18(6). For the meaning of 'fire authority' see PARA 17 ante.

10 Ibid reg 18(7).

11 As to the International Headquarters and Defence Organisations Act 1964 see ARMED FORCES.

12 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 19(1)(a).

13 Ibid reg 19(1)(b). In reg 19(1) 'visiting force' means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952 (see ARMED FORCES): Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 19(2).

14 Ibid reg 20. Regulation 10 (as amended) (see PARA 136 post) and the Fire Precautions Act 1971 s 30 (as amended) (see PARA 147 post) do not apply to any workplace over which the United Kingdom Atomic Energy Authority has control: Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 20. As to the United Kingdom Atomic Energy Authority see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1363 et seq.

15 See the text and notes 18-19 infra.

16 Ie within the meaning of Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 18(6): see note 9 supra.

17 Ibid reg 20(a).

18 Ie the provisions listed in PARA 122 ante.

19 For the meaning of 'workplace fire precautions legislation' see PARA 122 note 1 ante.

20 See the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17(1)(a); and PARA 122 ante. The provision of the Fire Precautions Act 1971 referred to in the text is s 12 (as amended): see PARAS 119-121 ante.

## UPDATE

### 81-149 Fire Precautions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### 131-147 Application of regulations ... Fire Precautions Act 1971 to prevail over local Acts

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, have been replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are

transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(iv) The Workplace/132. Disapplication of the Health and Safety at Work etc Act 1974.

### **132. Disapplication of the Health and Safety at Work etc Act 1974.**

For the purposes of certain provisions of the Health and Safety at Work etc Act 1974<sup>1</sup> the provisions of the workplace fire precautions legislation<sup>2</sup> are deemed (to the extent they would otherwise be so regarded) not to be provisions of health and safety regulations<sup>3</sup> or provisions forming part of the relevant statutory provisions<sup>4</sup>.

1 The Health and Safety at Work etc Act 1974 ss 16-24, 26, 28, 33-40, 42, 46 and 47 (all as amended): see HEALTH AND SAFETY AT WORK.

2 For the meaning of the 'workplace fire precautions legislation' see PARA 122 note 1 ante.

3 For these purposes 'health and safety regulations' have the meaning given to them by the Health and Safety at Work etc Act 1974: see Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 9(3); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 424. The provisions of the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500 (amended by SI 1997/1840 (as amended)), are to continue to be regarded, to the extent that they would otherwise be so regarded, as provisions of health and safety regulations within the meaning of the Health and Safety at Work etc Act 1974: Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 21(3).

4 Ibid reg 9(1). For these purposes, 'relevant statutory provisions' has the meaning given by the Health and Safety at Work etc Act 1974: see the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 9(3); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **131-147 Application of regulations ... Fire Precautions Act 1971 to prevail over local Acts**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, have been replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(iv) The Workplace/133. Application of fire precautions in the workplace.

### **133. Application of fire precautions in the workplace.**

Every employer<sup>1</sup> must ensure that certain requirements<sup>2</sup> of the Fire Precautions (Workplace) Regulations 1997<sup>3</sup> are complied with in respect of every workplace<sup>4</sup>, other than an excepted workplace<sup>5</sup>, which is to any extent under his control<sup>6</sup>; and the same duty in respect of any applicable requirement<sup>7</sup> applies to every person, other than the employer, who has, to any extent, control of a workplace, other than an excepted workplace<sup>8</sup>. Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to the maintenance or repair of any workplace or the safety of any workplace, that person is to be treated<sup>9</sup>, as being a person who has control of the workplace to the extent that his obligation so extends<sup>10</sup>.

An excepted workplace is:

- 160 (1) any workplace which is or is on a construction site<sup>11</sup> and to which certain regulations<sup>12</sup> apply<sup>13</sup>;
- 161 (2) any workplace which is or is in or on a ship<sup>14</sup> other than a ship which is in the course of construction, or in the course of repair by persons who include persons other than the master and crew of the ship<sup>15</sup>;
- 162 (3) any workplace which forms part of a mine<sup>16</sup>, other than any building on the surface at a mine<sup>17</sup>;
- 163 (4) any workplace which is or is in or on an offshore installation<sup>18</sup>;
- 164 (5) any workplace which is or is in or on an aircraft, locomotive or rolling stock, trailer or semi-trailer used as a means of transport or a vehicle for which a licence is in force<sup>19</sup> or a vehicle exempted from duty<sup>20</sup>; and
- 165 (6) any workplace which is in fields, woods or other land forming part of an agricultural or forestry undertaking but which is not inside a building and is situated away from the undertaking's main buildings<sup>21</sup>.

The requirements of Part II of the Fire Precautions (Workplace) Regulations 1997<sup>22</sup> do not have effect to the extent that they would prevent any member of the armed forces of the Crown or of any visiting force<sup>23</sup>, any constable or any member of a police force not being a constable, or any member of any emergency service, from carrying out their duties<sup>24</sup>.

1 'Employer' means a person who is or is treated as an employer for the purposes of the Management of Health and Safety at Work Regulations 1999, SI 1999/3242 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 428 et seq): Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 2(1) (amended by SI 1999/3242).

2 Ie the requirements of the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, Pt II (regs 3-6) (as amended).

3 Ie the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended).

4 'Workplace' means any premises or part of premises, not being domestic premises, used for the purposes of an employer's undertaking and which are made available to an employee of the employer as a place of work and includes (1) any place within the premises to which such employee has access while at work; and (2) any room, lobby, corridor, staircase, road or other place used as a means of access to or egress from that place of work; or where facilities are provided for use in connection with that place of work, other than a public road: ibid reg 2(1). 'Employee' means a person who is or is treated as an employee for the purposes of the Management of Health and Safety at Work Regulations 1999, SI 1999/3242 (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 428 et seq): Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 2(1) (as amended by SI 1999/3242). 'Public road' means a highway maintainable at public expense within the meaning of the Highways

Act 1980 s 329 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 248): Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 2(1). For the meaning of 'premises' see PARA 122 note 6 ante.

5 See the text to notes 11-21 infra.

6 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 3(1) (substituted by SI 1999/1877).

7 Ie under the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, Pt II (as amended).

8 Ibid reg 3(2). Any reference in the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), to a person having control of any workplace is a reference to a person having control of the workplace in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not): reg 3(4).

9 Ie for the purposes of ibid reg 3(2): see the text and note 8 supra.

10 Ibid reg 3(3).

11 Ie within the meaning of the Construction (Health, Safety and Welfare) Regulations 1996, SI 1996/1592, reg 2(1): see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 674.

12 Ie the Construction (Health, Safety and Welfare) Regulations 1996, SI 1996/1592: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 674.

13 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 3(5)(d).

14 Ie within the meaning of the Merchant Shipping Act 1995 s 313(1): see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 229.

15 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 3(5)(e) (substituted by SI 1999/1877).

16 'Mine' has the same meaning as in the Mines and Quarries Act 1954 (see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 5): Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 2 (definition added by SI 1999/1877).

17 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 3(5)(g) (substituted by SI 1999/1877).

18 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 3(5)(h). The reference in the text to an offshore installation is to one within the meaning of the Offshore Installations and Pipelines Works (Management and Administration) Regulations 1995, SI 1995/738, reg 3: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 733.

19 Ie under the Vehicle Excise and Registration Act 1994: see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 717 et seq.

20 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 3(5)(i). The reference in the text to a vehicle exempted from duty is to one exempted under the Vehicle Excise and Registration Act 1994: see CUSTOMS AND EXCISE vol 12(3) (2007 Reissue) PARA 717 et seq.

21 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 3(5)(j).

22 Ie ibid Pt II (as amended).

23 Ie within the meaning of ibid reg 19: see PARA 131 ante.

24 Ibid reg 3(6). Where reg 3(6) applies, the safety of employees in case of fire must nevertheless be ensured so far as is possible: reg 3(8).

## UPDATE

### 81-149 Fire Precautions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory



Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

**131-147 Application of regulations ... Fire Precautions Act 1971 to prevail over local Acts**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, have been replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(iv) The Workplace/134. Fire-fighting and fire detection.

### 134. Fire-fighting and fire detection.

Where necessary, whether due to the features of a workplace<sup>1</sup>, the activity carried on there, any hazard present there or any other relevant circumstances, in order to safeguard the safety of employees<sup>2</sup> in case of fire<sup>3</sup>, a workplace must, to the extent that is appropriate, be equipped with appropriate fire-fighting equipment and with fire detectors and alarms<sup>4</sup>. Any non-automatic fire-fighting equipment so provided must be easily accessible, simple to use and indicated by signs<sup>5</sup>.

An employer must, where necessary in order to safeguard the safety of his employees in case of fire:

- 166 (1) take measures for fire-fighting in the workplace, adapted to the nature of the activities carried on there and the size of his undertaking and of the workplace concerned and taking into account persons other than his employees who may be present<sup>6</sup>;
- 167 (2) nominate employees to implement those measures and ensure that the number of such employees, their training and the equipment available to them are adequate, taking into account the size of, and the specific hazards involved in, the workplace concerned<sup>7</sup>; and
- 168 (3) arrange any necessary contacts with external emergency services, particularly as regards rescue work and fire-fighting<sup>8</sup>.

1 For the meaning of 'workplace' see PARA 133 note 4 ante.

2 For the meaning of 'employee' see PARA 133 note 4 ante.

3 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 4(1).

4 Ibid reg 4(1)(a). For the purposes of reg 4(1)(a) what is appropriate is to be determined having regard to the dimensions and use of the buildings at the workplace, the equipment they contain, the physical and chemical properties of the substances likely to be present and the maximum number of people that may be present at any one time: reg 4(1) (amended by SI 1999/1877).

5 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 4(1)(b).

6 Ibid reg 4(2)(a).

7 Ibid reg 4(2)(b). As to the maintenance of the workplace and any equipment and devices see PARA 135 note 12 post. As to the employer's duty to consult safety representatives in respect of such nomination see the Safety Representatives and Safety Committees Regulations 1977, SI 1977/500, reg 4A(1)(b) (added by the SI 1992/2051; and amended by SI 1997/1840; SI 1999/3242); and EMPLOYMENT vol 41 (2009) PARA 1168. As to the employer's duty to consult employees who are not represented by safety representatives see the Health and Safety (Consultation with Employees) Regulations 1996, SI 1996/1513, reg 3(b) (as amended); and EMPLOYMENT vol 41 (2009) PARA 1170.

8 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 4(2)(c).

## UPDATE

### 81-149 Fire Precautions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

**131-147 Application of regulations ... Fire Precautions Act 1971 to prevail over local Acts**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, have been replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(iv) The Workplace/135. Emergency routes and exits.

### 135. Emergency routes and exits.

Where necessary in order to safeguard the safety of employees<sup>1</sup> in case of fire, routes to emergency exits from a workplace<sup>2</sup> and the exits themselves must be kept clear at all times<sup>3</sup>.

The following requirements must be complied with in respect of a workplace where necessary, whether due to the features of the workplace, the activity carried on there, any hazard present there or any other relevant circumstances, in order to safeguard the safety of employees in case of fire<sup>4</sup>:

- 169 (1) emergency routes and exits must lead as directly as possible to a place of safety<sup>5</sup>;
- 170 (2) in the event of danger, it must be possible for employees to evacuate the workplace quickly and as safely as possible<sup>6</sup>;
- 171 (3) the number, distribution and dimensions of emergency routes and exits must be adequate having regard to the use, equipment and dimensions of the workplace and the maximum number of persons that may be present there at any one time<sup>7</sup>;
- 172 (4) emergency doors must open in the direction of escape<sup>8</sup>;
- 173 (5) sliding or revolving doors must not be used for exits specifically intended as emergency exits<sup>9</sup>;
- 174 (6) emergency doors must not be so locked or fastened that they cannot be easily and immediately opened by any person who may require to use them in an emergency<sup>10</sup>;
- 175 (7) emergency routes and exits must be indicated by signs<sup>11</sup>; and
- 176 (8) emergency routes and exits requiring illumination must be provided with emergency lighting of adequate intensity in the case of failure of their normal lighting<sup>12</sup>.

1 For the meaning of 'employee' see PARA 133 note 4 ante.

2 For the meaning of 'workplace' see PARA 133 note 4 ante.

3 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 5(1).

4 Ibid reg 5(2).

5 Ibid reg 5(2)(a).

6 Ibid reg 5(2)(b).

7 Ibid reg 5(2)(c).

8 Ibid reg 5(2)(d).

9 Ibid reg 5(2)(e).

10 Ibid reg 5(2)(f). Without prejudice to reg 3(6) (see PARA 133 ante), reg 5(2)(f) does not apply to any premises falling within the scope of the Fire Precautions Act 1971 s 40(2)(a) (as amended) or s 40(2)(b) (see PARA 84 ante) or any part of any other premises used for keeping persons in lawful custody or detention: Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 3(7). Where reg 3(7) applies, the safety of employees in case of fire must nevertheless be ensured so far as is possible: reg 3(8).

11 Ibid reg 5(2)(g).

12 Ibid reg 5(2)(h). Where necessary in order to safeguard the safety of employees in case of fire, the workplace and any equipment and devices provided in respect of the workplace under reg 4 (see PARA 134 ante) and reg 5 must be subject to a suitable system of maintenance and be maintained in an efficient state, in efficient working order and in good repair: reg 6.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **131-147 Application of regulations ... Fire Precautions Act 1971 to prevail over local Acts**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, have been replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(iv) The Workplace/136. Enforcement.

### **136. Enforcement.**

It is the duty of every fire authority<sup>1</sup> to enforce within its area the workplace fire precautions legislation<sup>2</sup>. A fire authority may perform its functions under the Fire Precautions (Workplace) Regulations 1997<sup>3</sup> through inspectors appointed by it<sup>4</sup>.

1 For these purposes, 'fire authority' means an authority discharging the functions of fire authority under the Fire Services Act 1947 (see PARA 17 ante); Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 2(1). As to fire authorities see PARA 17 et seq ante.

2 Ibid reg 10(1). For the meaning of 'workplace fire precautions legislation' see PARA 122 note 1 ante. For the meaning of 'general fire precautions' see PARA 122 note 1 ante. As to excepted workplaces see PARA 133 ante.

3 Ie the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended).

4 Ibid reg 10(2). The reference in the text to inspectors is to those appointed pursuant to the Fire Precautions Act 1971 s 18(1) (as amended): see PARA 140 post. In the Fire Services Act 1947 s 24 (see PARA 11 ante) and s 33(1) (see PARA 15 post) (which authorise the appointment of inspectors and the holding of inquiries for obtaining information as to the performance by fire authorities of their functions under that Act) the references to that Act are to be read as including references to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended): reg 10(6). Regulation 10 (as amended) does not bind the Crown: see reg 18(1); and PARA 131 note 5 ante.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **131-147 Application of regulations ... Fire Precautions Act 1971 to prevail over local Acts**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, have been replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(iv) The Workplace/137. Offences in serious cases.

### **137. Offences in serious cases.**

A person is guilty of an offence if, being under a requirement to do so, he fails to comply with any provision of the workplace fire precautions legislation<sup>1</sup> and that failure places one or more employees<sup>2</sup> at risk of death or serious injury in case of fire<sup>3</sup>.

In any proceedings for such an offence it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence<sup>4</sup>.

A person is not guilty of such an offence in respect of any failure to comply with the workplace fire precautions legislation which is the subject of an enforcement notice<sup>5</sup>.

1 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 11(1)(a). For the meaning of 'workplace fire precautions legislation' see PARA 122 note 1 ante.

2 For the meaning of 'employee' see PARA 133 note 4 ante.

3 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 11(1)(b) (amended by SI 1999/1877). A person guilty of an offence under the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 11(1) (as amended) is liable on summary conviction to a fine not exceeding the statutory maximum; or on conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or both: reg 11(2). As to the statutory maximum see PARA 75 note 25 ante. Regulation 11 (as amended) does not bind the Crown: see reg 18(1); and PARA 131 note 5 ante.

4 Ibid reg 11(2A) (added by SI 1999/1877).

5 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 11(3). As to enforcement notices see PARA 138 post.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **131-147 Application of regulations ... Fire Precautions Act 1971 to prevail over local Acts**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, have been replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.





Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(iv) The Workplace/138. Enforcement notices.

### 138. Enforcement notices.

Where a fire authority<sup>1</sup> is of the opinion that a person, being under an obligation to do so, has failed to comply with any provision of the workplace fire precautions legislation<sup>2</sup> in respect of a workplace<sup>3</sup>, or employees<sup>4</sup> who work in a workplace, situated in the area for which it performs the functions of fire authority<sup>5</sup>, the authority may serve on that person an enforcement notice<sup>6</sup> which:

- 177 (1) states that it is of that opinion and why<sup>7</sup>;
- 178 (2) specifies what steps it considers are necessary to remedy that failure<sup>8</sup>;
- 179 (3) requires that person to take steps to remedy the failure within such period from the date of service of the notice (not being less than 21 days) as may be specified in the notice<sup>9</sup>; and
- 180 (4) explains how, where, within what period and on what grounds an appeal may be brought against the enforcement notice<sup>10</sup>.

Where a fire authority is of the opinion that a person's failure to comply with the workplace fire precautions legislation also extends to a workplace, or employees who work in a workplace, situated outside the area for which it performs the functions of fire authority, the notice served by it<sup>11</sup> may include requirements concerning that workplace or those employees, but before including any such requirements the authority must consult the fire authority for the area in which the workplace is situated<sup>12</sup>.

Before serving an enforcement notice which would oblige a person to make an alteration to a building or structure, the fire authority must consult<sup>13</sup> (a) such persons as it would have been required to consult<sup>14</sup> if the proposed enforcement notice had been a proposed improvement notice<sup>15</sup>; and (b) in the case of a building or structure in relation to all or any part of which an initial notice<sup>16</sup> is in force, the approved inspector who gave that initial notice<sup>17</sup>; (c) in the case of a workplace which is, includes or forms part of a designated sports ground, or a sports ground at which there is a regulated stand, the local authority<sup>18</sup>; (d) any other person whose consent to the alteration would be required by or under any enactment<sup>19</sup>.

Where an enforcement notice has been served the fire authority may withdraw the notice at any time before the end of the period specified in the notice<sup>20</sup>, and if an appeal<sup>21</sup> against the notice is not pending, the fire authority may extend or further extend the period specified in the notice<sup>22</sup>.

Without prejudice to the power of the court to cancel or modify an enforcement notice<sup>23</sup>, no failure on the part of a fire authority to consult<sup>24</sup> makes an enforcement notice void<sup>25</sup>.

It is an offence for a person to contravene any requirement imposed by an enforcement notice<sup>26</sup>. In any proceedings for such an offence it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence<sup>27</sup>.

1 For the meaning of 'fire authority', for these purposes, see PARA 136 note 1 ante.

2 For the meaning of the 'workplace fire precautions legislation' see PARA 122 note 1 ante.

3 For the meaning of 'workplace' see PARA 133 note 4 ante.

4 For the meaning of 'employee' see PARA 133 note 4 ante.

5 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 13(1)(a) (reg 13(1) amended by SI 1999/1877).

6 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 13(1) (as amended: see note 5 supra). Regulation 13 (as amended) does not bind the Crown: see reg 18(1); and PARA 131 note 5 ante.

7 Ibid reg 13(1)(i) (as amended: see note 5 supra).

8 Ibid reg 13(1)(ii) (as amended: see note 5 supra).

9 Ibid reg 13(1)(iii) (as amended: see note 5 supra).

10 Ibid reg 13(1)(iv) (as amended: see note 5 supra).

11 Ie under ibid s 13(1) (as amended): see the text and notes 1-10 supra.

12 Ibid reg 13(2).

13 Ibid reg 13(5) (amended by SI 1999/1877).

14 Ie under the Fire Precautions Act 1971 s 17 (as amended) (duty of fire authorities to consult other authorities before requiring alterations to buildings): see PARA 117 ante.

15 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 13(5)(a). The reference in the text to a proposed enforcement notice is to one proposed to be issued under the Fire Precautions Act 1971 s 9D (as added): see PARA 90 ante.

16 Ie given under the Building Act 1984 s 47 (as amended): see BUILDING.

17 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 13(5)(aa) (added by SI 1999/1877).

18 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 13(5)(ab) (added by SI 1999/1877). 'Sports ground' means any place where sports or other competitive activities take place in the open air and where accommodation has been provided for spectators, consisting of artificial structures or of natural structures artificially modified for the purpose: Safety of Sports Grounds Act 1975 s 17(1); definition applied by the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 13(5)(ab) (as so added). 'Designated sports ground' means a sports ground in respect of which a designation order is in operation: Safety of Sports Grounds Act 1975 s 1(4) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 19(1), Sch 2); definition applied by the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 13(5)(ab) (as so added). 'Local authority' means (1) in Greater London, the London borough council or the Common Council of the City of London; (2) in England, in the metropolitan counties, the district council; (3) in England outside Greater London and the metropolitan counties, the county council; (4) in Wales, the county council or county borough council: Safety of Sports Grounds Act 1975 s 17(1) (amended by the Local Government Act 1985 s 16, Sch 8); definition applied by the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 13(5)(ab) (as so added). 'Regulated stand' has the same meaning as in the Fire Safety and Safety of Places of Sport Act 1987: see the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 13(5)(ab) (as so added); and PARA 150 note 3 post.

19 Ibid reg 13(5)(b).

20 Ibid reg 13(6)(a).

21 As to appeals against enforcement notices see PARA 139 post.

22 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 13(6)(b).

23 Ie under ibid reg 14 (as amended): see PARA 139 post.

24 Ie under ibid reg 13(2) (see the text and note 12 supra) or (5) (as amended) (see the text and notes 13-19 supra).

25 Ibid reg 13(8) (amended by SI 1999/1877).

26 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 15(1). Any person guilty of an offence under reg 15(1) is liable on summary conviction to a fine not exceeding the statutory maximum; or on

conviction on indictment, to a fine, or to imprisonment for a term not exceeding two years, or both: reg 15(2). As to the statutory maximum see PARA 75 note 25 ante.

27 Ibid reg 15(3). Regulation 15 does not bind the Crown: see reg 18(1); and PARA 131 note 5 ante.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **131-147 Application of regulations ... Fire Precautions Act 1971 to prevail over local Acts**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, have been replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(3) FIRE PRECAUTIONS REGULATIONS/(iv) The Workplace/139. Enforcement notices: rights of appeal.

### **139. Enforcement notices: rights of appeal.**

A person on whom an enforcement notice<sup>1</sup> is served may, within 21 days from the day on which the enforcement notice is served, appeal to the court<sup>2</sup>. On such an appeal the court may either cancel or affirm the enforcement notice, and, if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit<sup>3</sup>.

Where an appeal is brought against an enforcement notice, the bringing of the appeal has the effect of suspending the operation of the notice until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal<sup>4</sup>.

1 As to enforcement notices see PARA 138 ante.

2 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 14(1). For these purposes, 'the court' means a magistrates' court acting for the petty sessions area in which any relevant workplace is situated; and a 'relevant workplace' is a workplace in respect of which the enforcement notice was served, other than a workplace covered by the notice by virtue of reg 13(2) (see PARA 138 text and note 12 ante): reg 14(5).

3 Ibid reg 14(2) (amended by SI 1999/1877).

4 Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 14(4) (amended by SI 1999/1877). The Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 14 (as amended) does not bind the Crown: see reg 18(1); and PARA 131 note 5 ante.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **131-147 Application of regulations ... Fire Precautions Act 1971 to prevail over local Acts**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, have been replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(4) ENFORCEMENT/140. Enforcement generally.

## **(4) ENFORCEMENT**

### **140. Enforcement generally.**

It is the duty of every fire authority<sup>1</sup> to enforce within its area the provisions of the Fire Precautions Act 1971 and of regulations made under it, and for that purpose to appoint inspectors<sup>2</sup>. However, a fire authority has power to arrange with the Health and Safety Commission for such of the authority's functions under the Fire Precautions Act 1971 as may be specified in the arrangements to be performed on its behalf by the Health and Safety Executive (with or without payment) in relation to any particular premises so specified which are used as a place of work<sup>3</sup>.

In relation to premises occupied by the Crown, or owned but not occupied by the Crown<sup>4</sup>, this enforcement duty falls upon a fire inspector or any person authorised to act for the purpose by the Secretary of State and not upon the fire authority<sup>5</sup>. This is also the case in relation to premises occupied by the United Kingdom Atomic Energy Authority<sup>6</sup>.

Any premises used for the purposes of a visiting force<sup>7</sup> or of a designated headquarters or defence organisation<sup>8</sup> are exempt from the operation of the Fire Precautions Act 1971 to the extent to which they would be so exempt if they were occupied by the Crown solely for purposes of the armed forces of the Crown<sup>9</sup>.

<sup>1</sup> For the meaning of 'fire authority' see PARA 17 ante.

<sup>2</sup> Fire Precautions Act 1971 s 18(1) (substituted by the Health and Safety at Work etc Act 1974 s 78). As from a day to be appointed under the Fire Safety and Safety of Places of Sport Act 1987 s 50(2), every fire authority will have the power to cause premises to be inspected for these purposes: Fire Precautions Act 1971 s 18(1) (as so substituted) (prospectively amended by the Fire Safety and Safety of Places of Sport Act 1987 s 10). At the date at which this volume states the law no such day had been appointed.

<sup>3</sup> Fire Precautions Act 1971 s 18(2) (added by the Health and Safety at Work etc Act 1974 s 78). For the meaning of 'work' see PARA 83 note 10 ante. As to the Health and Safety Commission and the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq. As from a day to be appointed the following provision is added. In performing the duty imposed by the Fire Precautions Act 1971 s 18(1) (as substituted) so far as it requires premises in their areas to be inspected, fire authorities must act in accordance with such guidance as the Secretary of State may give them: s 18(3) (prospectively added by the Fire Safety and Safety of Places of Sport Act 1987 s 10). At the date at which this volume states the law no such day had been appointed. As to the Secretary of State see PARA 10 ante. The Fire Precautions Act 1971 s 18 (as substituted and added) does not apply to any premises occupied by the United Kingdom Atomic Energy Authority: s 41. As to the United Kingdom Atomic Energy Authority see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1363 et seq.

<sup>4</sup> I.e. premises to which any provision of the Fire Precautions Act 1971 applies by virtue of s 40(1) (as amended): see s 40(3).

<sup>5</sup> See *ibid* s 40(3). As regards any premises falling within s 40(1)(a) (as amended), any power exercisable by a fire inspector by virtue of s 40(3) is also exercisable by an officer of the fire brigade maintained by the fire authority if and so far as he is so authorised in writing by the fire inspector with the fire authority's consent: s 40(4).

<sup>6</sup> See *ibid* s 41(a).

<sup>7</sup> For these purposes, 'visiting force' means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the Visiting Forces Act 1952 (see ARMED FORCES): Fire Precautions Act 1971 s 40(11).

8 le designated for the purposes of the International Headquarters and Defence Organisations Act 1964 (see ARMED FORCES): see the Fire Precautions Act 1971 s 40(11).

9 Ibid s 40(11). As to premises so occupied see s 40(2)(d); and PARA 84 text and note 6 ante.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **131-147 Application of regulations ... Fire Precautions Act 1971 to prevail over local Acts**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, have been replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(4) ENFORCEMENT/141. Inspection and powers of entry.

#### 141. Inspection and powers of entry.

Any of the following persons (referred to as 'inspectors'<sup>1</sup>) namely an inspector appointed<sup>2</sup> and a fire inspector<sup>3</sup>, may do anything necessary for the purpose of carrying the Fire Precautions Act 1971 and regulations under it into effect and, in particular, must, so far as may be necessary for that purpose, have power to do at any reasonable time any of the following things<sup>4</sup>:

- 181 (1) to enter certain premises<sup>5</sup>, and to inspect the whole or any part of them and anything in them<sup>6</sup>;
- 182 (2) to make such inquiry as may be necessary for certain purposes<sup>7</sup>;
- 183 (3) to require the production of, and to inspect, any fire certificate in force with respect to any premises or any copy of any such certificate<sup>8</sup>;
- 184 (4) to require any person having responsibilities in relation to any such premises<sup>9</sup> (whether or not the owner or occupier of the premises or a person employed to work in them) to give him such facilities and assistance with respect to any matters or things to which the responsibilities of that person extend as are necessary for the purpose of enabling the inspector to exercise any of the powers conferred<sup>10</sup>.

An inspector must, if so required when visiting any premises in the exercise of his powers<sup>11</sup>, produce to the occupier of the premises some duly authenticated document showing his authority<sup>12</sup>.

The like powers as are in relation to any premises conferred<sup>13</sup> on a fire inspector are exercisable by an officer of the fire brigade maintained by the fire authority<sup>14</sup> when authorised in writing by such an inspector for the purpose of reporting to him on any matter falling within his duties under the Fire Precautions Act 1971; and certain provisions of the Act, with the necessary modifications, apply accordingly<sup>15</sup>. A fire inspector must not authorise an officer of a fire brigade<sup>16</sup> except with the consent of the fire authority who maintains that brigade<sup>17</sup>.

A person who intentionally obstructs an inspector in the exercise or performance of his powers or duties<sup>18</sup>, or without reasonable excuse fails to comply with any requirement imposed by an inspector<sup>19</sup>, is guilty of an offence<sup>20</sup>. If a person discloses (otherwise than in the performance of his duty or for the purposes of any legal proceedings, including an arbitration, or for the purposes of a report of any such proceedings) any information obtained by him in any premises entered by him in the exercise of powers<sup>21</sup>, he is guilty of an offence<sup>22</sup>.

1    Ie in the Fire Precautions Act 1971 s 19 (as amended): see the text and notes 4-13 infra.

2    Ie under ibid s 18 (as amended): see PARA 140 ante.

3    'Fire inspector' means an inspector or assistant inspector appointed under the Fire Services Act 1947 s 24 (see PARA 11 ante): Fire Precautions Act 1971 s 43(1).

4    Ibid s 19(1). Section 19 (as amended) has effect with modifications in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if the requirements of those regulations were requirements made under regulations made under the Fire Precautions Act 1971 s 12 (as amended) (see PARAS 119-121 ante) and as if references to premises, owner or occupier include references to workplace and employer or other persons on whom obligations are imposed under the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended): see reg 17 (amended by SI 1999/1877); and PARA 122 ante.

5    Ie any such premises as are mentioned in the Fire Precautions Act 1971 s 19(2) (as amended): see the text and note 6 infra. In the case of premises used as a dwelling or premises of any other description prescribed for

the purposes of s 19(5), no power of entry conferred by s 19(1) is to be exercised as of right unless 24 hours' notice has been given to the occupier; and for these purposes a description of premises may be framed in any of the ways mentioned in s 1(4) (see PARA 83 ante); s 19(5). For the meaning of 'prescribed' see PARA 82 note 22 ante. For the meaning of 'premises' see PARA 82 ante.

6 Ibid s 19(1)(a). The premises referred to in the text are the following: (1) any premises requiring a fire certificate or to which any regulations made under s 12 (as amended) (see PARAS 119-121 ante) apply (s 19(2)(a)); (2) any premises in respect of which there is in force an exemption under s 5A (as added) (see PARA 86 ante) from the requirement for a fire certificate with respect to them (s 19(2)(aa) (added by the Fire Safety and Safety of Places of Sport Act 1987 s 2(2))); (3) any premises such as are mentioned in the Fire Precautions Act 1971 s 10(1)(a) (see PARA 142 post) (s 19(2)(b)); (4) any premises to which s 3 (see PARA 92 ante) for the time being applies (s 19(2)(c)); (5) any premises not falling within any of heads (1)-(4) supra which form part of a building comprising any premises so falling (s 19(2)(d)); and (6) any premises which the inspector has reasonable cause to believe to be premises falling within any of heads (1)-(5) supra (s 19(2)(e)).

7 Ibid s 19(1)(b). The purposes referred to in the text are the following: (1) to ascertain, as regards any premises, whether they fall within any of the provisions of s 19(2)(a)-(d) (see note 6 supra) (s 19(3)(a)); (2) to identify the owner or occupier of any premises falling within any of the provisions of s 19(2)(a)-(d) (see note 6 supra) (s 19(3)(b)); (3) to ascertain whether, in the case of any premises to which s 3 (see PARA 92) for the time being applies, any person has the overall management of the building constituting or comprising the premises and, if so, to identify that person (s 19(3)(c)); (4) to ascertain, as regards any premises falling within any of the provisions of s 19(2)(a)-(d) (see note 6 supra), whether the provisions of the Fire Precautions Act 1971 and regulations made under s 12 (as amended) (see PARAS 119-121 ante) are complied with, and, where a fire certificate is in force in respect of any such premises, whether the requirements imposed by the certificate are complied with (s 19(3)(d)). At the date at which this volume states the law no order had been made bringing s 19(3)(c) into force. For the meaning of 'owner' see PARA 92 note 7 ante. For the meaning of 'building' see PARA 82 ante.

8 Ibid s 19(1)(c). As to fire certificates see PARA 83 et seq ante.

9 Ie such premises as are referred to in ibid s 19(1)(a): see the text and note 6 supra.

10 Ibid s 19(1)(d). The reference in the text to the powers conferred on an inspector are to those conferred by s 19 (as amended): s 19(1)(d). Section 19 (as amended) applies to premises owned by the Crown but not occupied by it: see s 40(1)(b).

11 Ie the powers conferred on him by ibid s 19 (as amended).

12 Ibid s 19(4).

13 Ie by ibid s 19 (as amended): see the text and notes 1-12 supra.

14 Ibid s 20(1). The reference in the text to certain provisions is to s 19(4), (6) (as amended) (see the text and notes 12 supra, 20 infra): s 20(1). In the case of premises occupied by the United Kingdom Atomic Energy Authority, for the reference in s 20(1) to an officer of the fire brigade is to be substituted a reference to any person: s 41(b). Section 20 applies to premises owned by the Crown but not occupied by it (s 40(1)(b)); and in relation to such premises s 20(1) has effect as if for the reference to an officer of the fire brigade there were substituted a reference to any person (s 40(6)). Section 20 has effect with modifications in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if the requirements of those regulations were requirements made under regulations made under the Fire Precautions Act 1971 s 12 (as amended) (see PARAS 119-121 ante) and as if references to premises, owner or occupier include references to workplace and employer or other persons on whom obligations are imposed under the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended): see reg 17 (amended by SI 1999/1877); and PARA 122 ante. In the case of premises occupied by the United Kingdom Atomic Energy Authority, for the reference in the Fire Precautions Act 1971 s 20(1) to an officer of the fire brigade is to be substituted a reference to any person: Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 20(b). As to the United Kingdom Atomic Energy Authority see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1363 et seq.

15 Fire Precautions Act 1971 s 20(1).

16 Ie under ibid s 20.

17 Ibid s 20(2). As to fire brigades see PARA 35 et seq ante.

18 Ie under the Fire Precautions Act 1971.

19 Ie under ibid s 19(1)(d): see the text and note 10 supra.



20 Ibid s 19(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 19(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 7 note 1 ante.

21 le conferred by the Fire Precautions Act 1971.

22 Ibid s 21(1) (amended by the Fire Safety and Safety of Places of Sport Act 1987 s 11). A person guilty of an offence under the Fire Precautions Act 1971 s 21(1) (as amended) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 21(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46).

Nothing in the Fire Precautions Act 1971 s 21(1) (as amended) prohibits the disclosure of information to an enforcing authority within the meaning of the Health and Safety at Work etc Act 1974 (see HEALTH AND SAFETY AT WORK) in order to enable that authority to discharge any function falling within its field of responsibility: Fire Precautions Act 1971 s 21(2) (added by Fire Safety and Safety of Places of Sport Act 1987 s 11).

The Health and Safety at Work etc Act 1974 (meaning in Pt I (ss 1-54) (as amended) of 'enforcing authority' and of such an authority's 'field of responsibility') applies for the purposes of the Fire Precautions Act 1971 s 21 (as amended) as it applies for the purposes of the Health and Safety at Work etc Act 1974 Pt I (as amended): see the Fire Precautions Act 1971 s 21(3) (added by the Fire Safety and Safety of Places of Sport Act 1987 s 11); and HEALTH AND SAFETY AT WORK. The Fire Precautions Act 1971 s 21 (as amended) applies to premises owned by the Crown but not occupied by it: s 40(1)(b). Section 21 (as amended) has effect with modifications in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if the requirements of those regulations were requirements made under regulations made under the Fire Precautions Act 1971 s 12 (as amended) (see PARAS 119-121 ante) and as if references to premises, owner or occupier include references to workplace and employer or other persons on whom obligations are imposed under the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended): see reg 17 (amended by SI 1999/1877); and PARA 122 ante.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **131-147 Application of regulations ... Fire Precautions Act 1971 to prevail over local Acts**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, have been replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(4) ENFORCEMENT/142. Special procedure in case of serious risk: prohibition notices.

#### **142. Special procedure in case of serious risk: prohibition notices.**

If as regards certain premises<sup>1</sup> the fire authority<sup>2</sup> is of the opinion that use of the premises involves or will involve a risk to persons on the premises in case of fire so serious that use of the premises ought to be prohibited or restricted, the authority may serve on the occupier of the premises a notice (referred to as 'a prohibition notice')<sup>3</sup>.

A prohibition notice must:

- 185 (1) state that the fire authority is of a certain opinion<sup>4</sup>;
- 186 (2) specify the matters which in its opinion give or, as the case may be, will give rise to that risk<sup>5</sup>; and
- 187 (3) direct that the use to which the prohibition notice relates is prohibited or restricted to such extent as may be specified in the notice until the specified matters have been remedied<sup>6</sup>.

A prohibition notice may include directions as to the steps which will have to be taken to remedy the matters specified in the notice<sup>7</sup>. A prohibition or restriction contained in a prohibition notice<sup>8</sup> takes effect immediately it is served if the authority is of the opinion, and so states in the notice, that the risk of serious personal injury is or, as the case may be, will be imminent, and in any other case takes effect at the end of a period specified in the prohibition notice<sup>9</sup>. Where a prohibition notice has been served<sup>10</sup> the fire authority may withdraw the notice at any time<sup>11</sup>.

A person on whom a prohibition notice is served may, within 21 days from the date on which the prohibition notice is served, appeal to the court<sup>12</sup>. On an appeal, the court may either cancel or affirm the notice, and, if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit<sup>13</sup>.

Where an appeal is brought<sup>14</sup> against a prohibition notice, the bringing of the appeal does not have the effect of suspending the operation of the notice, unless, on the application of the appellant, the court so directs (and then only from the giving of the direction)<sup>15</sup>.

It is an offence for any person to contravene any prohibition or restriction imposed by a prohibition notice<sup>16</sup>. In any proceedings for such an offence, where the person charged is a person other than the person on whom the prohibition notice was served, it is a defence for that person to prove that he did not know and had no reason to believe the notice had been served<sup>17</sup>.

1 In any premises to which the Fire Precautions Act 1971 s 10 (as substituted) applies, namely: (1) any premises which are being or are proposed to be put to a use (whether designated or not) which falls within at least one of the classes of use mentioned in s 1(2) (as amended) (see PARA 83 ante), other than premises of the description given in s 2 (as amended) (see PARA 84 ante) (s 10(1)(a)) (s 10 substituted by the Fire Safety and Safety of Places of Sport Act 1987 s 9(1)); and (2) any premises to which the Fire Precautions Act 1971 s 3 (see PARA 92 ante) for the time being applies (s 10(1)(b) (as so substituted)).

Section 10 (as substituted) also applies to: (a) tents and other movable structures (other than vessels); (b) places of work in the open air; and (c) vessels remaining moored or remaining on dry land, which are relevant workplaces: Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 12(1) (amended by SI 1999/1877). For the purposes of the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 12(1) (as amended), a relevant workplace is a workplace other than an excepted workplace: reg 12(2). As to excepted workplaces see PARA 133 ante. The matters relevant to the assessment by the fire authority, for the purposes of

the Fire Precautions Act 1971 s 10(2) (see the text and note 3 *infra*), of the risk to persons in case of fire include anything affecting their escape from the premises in that event: s 10(3) (as so substituted). Section 10 (as substituted) applies to premises owned by the Crown but not occupied by it (s 40(1)(b)) but, to the extent that s 10 (as substituted) is extended by Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 12, it only binds the Crown in so far as it applies to premises and workplaces owned by the Crown but not occupied by it: reg 18(2). For the meaning of 'premises' see PARA 82 *ante*.

2 For the meaning of 'fire authority' see PARA 17 *ante*.

3 Fire Precautions Act 1971 s 10(2) (as substituted: see note 1 *supra*).

4 *Ibid* s 10(4)(a) (as substituted: see note 1 *supra*). The reference in the text to the fire authority being of a certain opinion is to the opinion referred to in s 10(2) (as substituted) (see the text and note 3 *supra*): s 10(4)(a) (as so substituted).

5 *Ibid* s 10(4)(b) (as substituted: see note 1 *supra*).

6 *Ibid* s 10(4)(c) (as substituted: see note 1 *supra*).

7 *Ibid* s 10(5) (as substituted: see note 1 *supra*).

8 *Ie* in pursuance of *ibid* s 10(4)(c) (as substituted): see the text and note 6 *supra*.

9 *Ibid* s 10(6) (as substituted: see note 1 *supra*).

10 *Ie* under *ibid* s 10(2) (as substituted): see the text and note 3 *supra*. As to the service of notices see PARA 113 note 6 *ante*.

11 *Ibid* s 10(7) (as substituted: see note 1 *supra*).

12 *Ibid* s 10A(1) (s 10A added by the Fire Safety and Safety of Places of Sport Act 1987 s 9(2)). The Fire Precautions Act 1971 s 10A (as added) applies to: (1) tents and other movable structures (other than vessels); (2) places of work in the open air; and (3) vessels remaining moored or remaining on dry land, which are relevant workplaces: Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 12(1) (amended by SI 1999/1877).

13 Fire Precautions Act 1971 s 10A(2) (as added: see note 12 *supra*). For the meaning of 'court' see PARA 91 note 2 *ante*.

14 *Ie* under *ibid* s 10A (as added).

15 *Ibid* s 10A(3) (as added: see note 12 *supra*).

16 *Ibid* s 10B(1) (s 10B added by the Fire Safety and Safety of Places of Sport Act 1987 s 9(2)). A person guilty of such an offence is liable on summary conviction to a fine not exceeding the statutory maximum; or on conviction on indictment to a fine, or imprisonment for a term not exceeding two years, or both: Fire Precautions Act 1971 s 10B(3) (as so added). As to the statutory maximum see PARA 75 note 25 *ante*. Section 10B (as added) applies to premises owned by the Crown but not occupied by it: s 40(1)(b) (added by the Fire Safety and Safety of Places of Sport Act 1987 s 18). The Fire Precautions Act 1971 s 10B (as added) applies to: (1) tents and other movable structures (other than vessels); (2) places of work in the open air; and (3) vessels remaining moored or remaining on dry land, which are relevant workplaces: Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 12(1) (amended by SI 1999/1877).

17 Fire Precautions Act 1971 s 10B(2) (as added: see note 16 *supra*).

## UPDATE

### 81-149 Fire Precautions

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the

purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

**131-147 Application of regulations ... Fire Precautions Act 1971 to prevail over local Acts**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, have been replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(4) ENFORCEMENT/143. Offences in connection with fire certificates, false statements and impersonation.

**143. Offences in connection with fire certificates, false statements and impersonation.**

A person is guilty of an offence if (1) with intent to deceive, makes or has in his possession a document so closely resembling a fire certificate as to be calculated to deceive<sup>1</sup>; or (2) for the purpose of procuring the issue of a fire certificate, makes any statement or gives any information which he knows to be false in a material particular or recklessly makes any statement or gives any information which is so false<sup>2</sup>; or (3) in purported compliance with any obligation to give information to which he is subject under or by virtue of the Fire Precautions Act 1971, or in response to any inquiry<sup>3</sup>, gives any information which he knows to be false in a material particular or recklessly gives any information which is so false<sup>4</sup>; or (4) makes in any register, book, notice or other document required to be kept, served or given<sup>5</sup>, an entry which he knows to be false in a material particular<sup>6</sup>.

If a person with intent to deceive pretends to be an inspector<sup>7</sup> or a person by whom the powers conferred<sup>8</sup> on a fire inspector are exercisable<sup>9</sup>, he is guilty of an offence<sup>10</sup>.

Other offences under the Fire Precautions Act 1971 are dealt with elsewhere in this title<sup>11</sup>.

1 Fire Precautions Act 1971 s 22(1)(a) (amended by the Forgery and Counterfeiting Act 1981 s 30, Schedule Pt I). The Fire Precautions Act 1971 s 22(1) (as amended) has effect with modifications in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if the requirements of those regulations were requirements made under regulations made under the Fire Precautions Act 1971 s 12 (as amended) (see PARAS 119-121 ante), and as if references to premises, owner or occupier include references to workplace and employer or other persons on whom obligations are imposed under the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended): see reg 17 (amended by SI 1999/1877); and PARA 122 ante. As to fire certificates see PARA 111 et seq ante.

2 Fire Precautions Act 1971 s 22(1)(b).

3 I.e. made by virtue of *ibid* s 19(1)(b): see PARA 141 ante.

4 *Ibid* s 22(1)(c).

5 I.e. by or by virtue of regulations made under the Fire Precautions Act 1971.

6 *Ibid* s 22(1)(d). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 22(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 7 note 1 ante.

7 Fire Precautions Act 1971 s 22(2)(a). The reference in the text to an inspector is to one within the meaning of s 19 (as amended): see PARA 141 ante.

8 I.e. conferred by *ibid* s 19 (as amended): see PARA 141 ante.

9 *Ibid* s 22(2)(b). The reference in the text to the powers exercisable by an inspector are to those exercisable by virtue of s 20 (see PARA 141 ante): s 22(2)(b).

10 *Ibid* s 22(2) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Fire Precautions Act 1971 s 22(2) (as so amended). If a person with intent to deceive pretends to be a person by whom any powers exercisable by a fire inspector by virtue of s 40(3) (see PARA 140 ante) are exercisable by virtue of s 40(4) (see PARA 140 ante), he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 40(5) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46).

11 See PARAS 83 text and note 26, 92 text and note 30 ante (use of premises without a fire certificate when a certificate is required); para 111 note 8 ante (failure to keep fire certificate on premises), PARA 111 text and note 28 ante (contravention of requirement of a fire certificate); para 112 text and note 13 ante (failure to give notice of proposed material change in premises covered by a fire certificate); para 120 text and note 19 ante (contravention of fire precautions regulations); para 141 text and note 20 ante (obstruction of inspector); and PARA 141 text and note 22 ante (wrongful disclosure of information).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **131-147 Application of regulations ... Fire Precautions Act 1971 to prevail over local Acts**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, have been replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(4) ENFORCEMENT/144. Civil and other liability.

#### **144. Civil and other liability.**

The provisions of the Fire Precautions Act 1971, except in so far as the Act otherwise expressly provides, must not be construed<sup>1</sup> as:

- 188 (1) conferring a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of a provision of the Act, of any regulations under it or of any fire certificate or notice issued or served under it by the fire authority<sup>2</sup>; or
- 189 (2) affecting any requirement or restriction imposed by or under any other enactment whether contained in a public general Act or in a local or private Act<sup>3</sup>; or
- 190 (c) derogating from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under the Fire Precautions Act 1971<sup>4</sup>.

1 Fire Precautions Act 1971 s 27A (added by the Fire Safety and Safety of Places of Sport Act 1987 s 12(1)).

Section 27A (as added) is subject to the Interpretation Act 1978 s 18 (offences under two or more laws) (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) PARA 1272): see the Fire Precautions Act 1971 s 27A (as so added). Section 27A (as added) has effect with modifications in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if the requirements of those regulations were requirements made under regulations made under the Fire Precautions Act 1971 s 12 (as amended) (see PARAS 119-121 ante) and as if references to premises, owner or occupier include references to workplace and employer or other persons on whom obligations are imposed under the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended): see reg 17 (amended by SI 1999/1877); and PARA 122 ante.

2 Fire Precautions Act 1971 s 27A(a) (as added: see note 1 supra). For the meaning of 'notice' see PARA 92 note 4 ante. For the meaning of 'fire authority' see PARA 17 ante.

3 Ibid s 27A(b) (as added: see note 1 supra). See, however, PARA 147 post.

4 Ibid s 27A(c) (as added: see note 1 supra).

### **UPDATE**

#### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.



Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(4) ENFORCEMENT/145. Liability of directors and persons not primarily liable.

#### **145. Liability of directors and persons not primarily liable.**

Where an offence under the Fire Precautions Act 1971 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of that offence, and is liable to be proceeded against and punished accordingly<sup>1</sup>.

Where the commission by any person of an offence<sup>2</sup> is due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person<sup>3</sup>.

1 Fire Precautions Act 1971 s 23(1). Where the affairs of a body corporate are managed by its members, s 23 applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate: s 23(2). The intended scope of s 23 is to fix with criminal liability only those who are in a position of real authority and who are responsible for putting procedures in place, namely the decision-makers within the company who have both the power and responsibility to decide corporate policy and strategy: see *R v Boal* [1992] QB 591, [1992] 3 All ER 177, CA. The Fire Precautions Act 1971 s 23 has effect with modifications in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if the requirements of those regulations were requirements made under regulations made under the Fire Precautions Act 1971 s 12 (as amended) (see PARAS 119-121 ante) and as if references to premises, owner or occupier include references to workplace and employer or other persons on whom obligations are imposed under the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended): see reg 17 (amended by SI 1999/1877); and PARA 122 ante.

2 Ie under the Fire Precautions Act 1971 or any regulations made under it.

3 Ibid s 24.

### **UPDATE**

#### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

#### **131-147 Application of regulations ... Fire Precautions Act 1971 to prevail over local Acts**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, have been replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.



Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(4) ENFORCEMENT/146. Defence of due diligence.

#### **146. Defence of due diligence.**

In any proceedings for an offence under the Fire Precautions Act 1971 or under regulations made under it, it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence<sup>1</sup>.

<sup>1</sup> Fire Precautions Act 1971 s 25. Section 25 has effect with modifications in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if the requirements of those regulations were requirements made under regulations made under the Fire Precautions Act 1971 s 12 (as amended) (see PARAS 119-121 ante) and as if references to premises, owner or occupier include references to workplace and employer or other persons on whom obligations are imposed under the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended): see reg 17 (amended by SI 1999/1877); and PARA 122 ante.

### **UPDATE**

#### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

#### **131-147 Application of regulations ... Fire Precautions Act 1971 to prevail over local Acts**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, have been replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(4) ENFORCEMENT/147. Fire Precautions Act 1971 to prevail over local Acts.

#### **147. Fire Precautions Act 1971 to prevail over local Acts.**

A person required by or under a local Act to do any thing in relation to any premises<sup>1</sup> is not to be treated as having acted in contravention<sup>2</sup> of that Act by reason of his failure to do that thing in so far as the failure is attributable to the fact that remedying it would involve a contravention of the Fire Precautions Act 1971 or of regulations<sup>3</sup> made under it<sup>4</sup>.

So long as a fire certificate is in force with respect to any premises, any provision of a local Act which would apply<sup>5</sup> in the case of those premises does not apply in their case in so far as it relates to any matter in relation to which requirements are imposed by that certificate; and so long as any regulations<sup>6</sup> apply to any premises, any provision of a local Act which would apply<sup>7</sup> in the case of those premises does not apply in their case in so far as it relates to any matter about which provision is made in the regulations<sup>8</sup>.

1 For the meaning of 'premises' see PARA 82 ante.

2 For the meaning of 'contravention' see PARA 89 note 13 ante.

3 Ie under the Fire Precautions Act 1971 s 12 (as amended): see PARAS 119-121 ante.

4 Ibid s 32. Section 32 applies to premises owned by the Crown but not occupied by it: s 40(1)(b). Section 32 has effect with modifications in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if the requirements of those regulations were requirements made under regulations made under the Fire Precautions Act 1971 s 12 (as amended) (see PARAS 119-121 ante) and as if references to premises, owner or occupier include references to workplace and employer or other persons on whom obligations are imposed under the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended): see reg 17 (amended by SI 1999/1877); and PARA 122 ante. As to overlapping provisions of licences see PARAS 111, 119 ante.

5 Ie apart from the Fire Precautions Act 1971 s 30(2): see the text and note 8 infra.

6 Ie made under ibid s 12 (as amended): see PARAS 119-121 ante.

7 Ie apart from ibid s 30(2): see the text and note 8 infra.

8 Ibid s 30(2). While s 30(2) applies to any premises, none of the following provisions applies to the premises: (1) Building Act 1984 s 71(1)-(4) (see BUILDING) (Fire Precautions Act 1971 s 30(3)(a) (substituted by the Building Act 1984 s 133(1), Sch 6 para 13)); (2) Building Act 1984 s 72 (except s 72(5)) (see BUILDING) (Fire Precautions s 30(3)(b) (substituted by the Building Act 1984 s 133(1), Sch 6 para 13)); (3) London Building Acts (Amendment) Act 1939 s 35 (as amended) (means of escape in buildings in inner London) (see BUILDING) (Fire Precautions Act 1971 s 30(3)(c)); and (4) any provision of a local Act which is for the time being designated for the purposes of this provision under s 30(5) (s 30(3)(d)).

Section 30(3) (as amended) applies to: (a) any premises in respect of which a fire certificate is for the time being in force (s 30(4)(a)); (b) any premises to which a notice for the time being in force under s 3 (see PARA 92 ante) relates (s 30(4)(b)); and (c) any premises to which any regulations made under s 12 (as amended) (see PARAS 119-121 ante) apply (s 30(4)(c)). Where it appears to the Secretary of State, as regards any provision contained in a local Act, that it is unnecessary or would be impracticable for that provision to apply to premises while they are premises to which s 30(3) (as amended) applies, he may by order designate that provision for the purposes of s 30(3)(d): s 30(5). At the date at which this volume states the law no orders had been made under s 30(5). As to the Secretary of State see PARA 10 ante. An order under s 30(5) may be varied or revoked by a subsequent order under it: s 30(6). The power to make orders under s 30(5) is exercisable by statutory instrument, which is subject to annulment in pursuance of a resolution of either House of Parliament: s 30(7).

Section 30 (as amended) has effect with modifications in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended), as if the requirements of those regulations were requirements made under regulations made under the Fire Precautions Act 1971 s 12 (as amended) (see PARAS 119-121 ante) and as if references to premises, owner or occupier include references to workplace and employer or other

persons on whom obligations are imposed under the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840 (as amended): see reg 17 (amended by SI 1999/1877); and PARA 122 ante. The Fire Precautions Act 1971 s 30 (as amended) as it has effect in relation to the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17 (as amended) does not apply to any workplace over which the United Kingdom Atomic Energy Authority has control: Fire Precautions Act 1971 s 41; Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, reg 17 (amended by SI 1999/1877). The Fire Precautions Act 1971 s 30 (as amended) does not apply to any premises occupied by the United Kingdom Atomic Energy Authority: s 41. As to the United Kingdom Atomic Energy Authority see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1363 et seq.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **131-147 Application of regulations ... Fire Precautions Act 1971 to prevail over local Acts**

The Fire Precautions Act 1971 and the Fire Precautions (Workplace) Regulations 1997, SI 1997/1840, have been replaced by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541. The functions of the Secretary of State under SI 2005/1541 are transferred, in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 2006, SI 2006/1458, arts 2(b), 3.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(5) FIRE PRECAUTIONS LOANS/148. Loans to meet fire precautions expenditure.

## **(5) FIRE PRECAUTIONS LOANS**

### **148. Loans to meet fire precautions expenditure.**

The Fire Precautions Act 1971<sup>1</sup> and the Fire Precautions (Loans) Act 1973 each contain provisions under which loans can be made to meet certain expenditure on premises<sup>2</sup> requiring a fire certificate<sup>3</sup>. Under both Acts such loans fall to be made by the local authority<sup>4</sup> in whose area the premises are situate<sup>5</sup> and that authority must be satisfied that the person to whom a loan is made may reasonably be expected to meet his obligations in that regard<sup>6</sup>. Under the Fire Precautions Act 1971 a loan must be secured by a mortgage of the applicant's interest in the relevant building<sup>7</sup>, but under the Fire Precautions (Loans) Act 1973 a loan may be secured or unsecured<sup>8</sup>.

The provisions of the Fire Precautions Act 1971 relating to loans apply only in the case of a dwelling house in relation to which the fire authority has served a notice<sup>9</sup> making a fire certificate compulsory<sup>10</sup>. In such case a loan may be applied for to meet the cost of structural or other alterations required<sup>11</sup> by the fire authority<sup>12</sup> (including alterations required in consequence of a change of conditions)<sup>13</sup>.

In the case of other premises requiring a fire certificate<sup>14</sup>, the Fire Precautions (Loans) Act 1973 applies if the premises are of a description specified for the purposes of that Act by order made by the Secretary of State<sup>15</sup>. In such case a loan may be applied for to meet the cost of making any structural or other alterations required by notice<sup>16</sup> except where alterations are required by the fire authority in consequence of a change of conditions<sup>17</sup>.

A loan under the Fire Precautions Act 1971 bears interest at a rate determined at the date the loan is agreed corresponding to the rate then applicable in the case of loans raised by local authorities<sup>18</sup> or, where there are two or more such rates, at such of those rates as the Treasury directs<sup>19</sup>. The position is similar in relation to a loan under the Fire Precautions (Loans) Act 1973 except that the local authority may require interest at a rate one-quarter per cent higher than that of the relevant local loans rate<sup>20</sup>.

The contract for a loan offered by the local authority under the Fire Precautions Act 1971 requires proof of title and contains such other reasonable terms as the local authority may specify in its offer<sup>21</sup>. The local authority's offer may in particular include provision<sup>22</sup> for the advance to be paid in instalments as the alterations progress<sup>23</sup>, and for repayment either by instalments of principal or by an annuity of principal and interest combined<sup>24</sup>. Provision may also be made in respect of repayment in the event of any of the conditions subject to which the advance is made not being complied with<sup>25</sup> and for repayment of the balance on one of the usual quarter days upon giving one month's written notice of intention to repay<sup>26</sup>.

1 See the Fire Precautions Act 1971 s 36; and the text and notes 2-26 infra.

2 For the meaning of 'premises' see PARA 82 ante.

3 See the Fire Precautions Act 1971 s 36 and the Fire Precautions (Loans) Act 1973. The reference in the text to premises requiring a fire certificate is to those requiring a certificate under the Fire Precautions Act 1971 ss 1 (as amended), 3: see PARAS 83, 92 ante.

4 For the meaning of 'local authority' see PARA 92 note 9 ante.

5 See the Fire Precautions Act 1971 s 36(1); and the Fire Precautions (Loans) Act 1973 s 1(1). At the date at which this volume states the law no order had been made bringing the Fire Precautions Act 1971 s 36 (as amended) into force. Section 36 (as amended) does not apply to any premises occupied by the United Kingdom Atomic Energy Authority: s 41. As to the United Kingdom Atomic Energy Authority see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1363 et seq.

6 See *ibid* s 36(2); and the Fire Precautions (Loans) Act 1973 s 1(2).

7 See the Fire Precautions Act 1971 s 36(2). For the meaning of 'relevant building' see PARAS 83 note 27, 92 note 10 ante. The applicant's interest in the relevant building must amount to a fee simple absolute in possession or an estate for a term of years absolute (see REAL PROPERTY vol 39(2) (Reissue) PARA 91 et seq) which will not expire before the date for final repayment of the loan (see s 36(3)(a)); and the loan must not exceed the value of the mortgaged premises after the proposed alterations have been carried out (see s 36(3)(b)).

8 See the Fire Precautions (Loans) Act 1973 s 1(2). The Charities Act 1993 s 38 (see CHARITIES vol 8 (2010) PARA 398) does not apply to the mortgage of an interest under the Fire Precautions (Loans) Act 1973 s 1 (as amended): see s 1(7).

9 *Ie* under the Fire Precautions Act 1971 s 3 (see PARA 92 ante).

10 See *ibid* s 36(1).

11 *Ie* by notice served under *ibid* s 5(4) (see PARA 115 text and notes 14-18 ante), s 8(5) (see PARA 113 text and notes 19-24 ante), or s 12(8)(b) (see PARA 121 text and notes 12-17 ante).

12 For the meaning of 'fire authority' see PARA 17 ante.

13 See the Fire Precautions Act 1971 ss 36(1) (see the text and note 5 supra), 8(5) (see PARA 113 ante).

14 *Ie* under *ibid* s 1 (as amended): see PARA 83 ante.

15 Fire Precautions (Loans) Act 1973 s 1(1)(a). As to the Secretary of State see PARA 10 ante. An order may describe premises by reference to their rateable value, the purpose for which they are used, the number of persons who may be accommodated in them, or the size or type of the building constituting or comprising the premises, or by reference to any other circumstances whatsoever: s 1(5). An order may also include such supplementary and incidental provisions as appear to the Secretary of State to be necessary or expedient for the purposes of the order; and may be varied or revoked by a subsequent order: s 1(5). The power to make such an order is exercisable by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament: s 1(6). At the date at which this volume states the law, the only order made under this power is the Fire Precautions (Loans) Order 1973, SI 1973/1271, which specifies, as premises qualifying for loans, those for which a fire certificate is required by virtue of the Fire Precautions (Hotels and Boarding Houses) Order 1972, SI 1972/238 (see PARAS 83, 85 ante) and which do not provide sleeping accommodation for more than 25 persons, including staff: see the Fire Precautions (Loans) Order 1973, SI 1973/1271, art 3.

16 *Ie* under the Fire Precautions Act 1971 s 5(4) (see PARA 115 text and notes 14-18 ante), or s 12(8)(b) (see PARA 121 text and notes 12-17 ante).

17 See the Fire Precautions (Loans) Act 1973 s 1(1)(b).

18 *Ie* the rate for the time being determined by the Treasury in accordance with the National Loans Act 1968 s 5 (as substituted and amended): see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 736.

19 See the Fire Precautions Act 1971 s 36(4), (5). A direction by the Treasury is published in the London Gazette: s 36(6). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 512-517.

20 See the Fire Precautions (Loans) Act 1973 s 1(3), (4).

21 See the Fire Precautions Act 1971 s 36(7).

22 See *ibid* s 36(8) (substituted by the Housing (Consequential Provisions) Act 1985 s 4, Sch 2 para 21(1), (2)).

23 See the Fire Precautions Act 1971 s 36(8)(a).

24 See *ibid* s 36(8)(b).

25 See *ibid* s 36(8)(c).

26 See *ibid* s 36(8)(d).

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see *LOCAL GOVERNMENT* vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see *ADMINISTRATIVE LAW* vol 1(1) (2001 Reissue) PARA 196A.

### **148 Loans to meet fire precautions expenditure**

TEXT AND NOTES--1971 Act, 1973 Act replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.



Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(6) HOUSES IN MULTIPLE OCCUPATION/149. Fire safety in relation to houses in multiple occupation.

## **(6) HOUSES IN MULTIPLE OCCUPATION**

### **149. Fire safety in relation to houses in multiple occupation.**

Where in the opinion of the local housing authority<sup>1</sup>, a house in multiple occupation<sup>2</sup> fails to meet one or more of certain requirements, including a requirement as to fire safety<sup>3</sup>, and having regard to the number of individuals or households or both for the time being accommodated on the premises, by reason of that failure the premises are not reasonably suitable for occupation by those individuals or households, the authority may serve a notice<sup>4</sup> which must specify the works which in the opinion of the authority are required for rendering the house reasonably suitable for occupation by individuals and households and for the time being accommodated there<sup>5</sup>, or for a smaller number of individuals or households and the number of individuals or households, or both, which, in the opinion of the authority the house could reasonably accommodate if the works were carried out<sup>6</sup>.

In any case where the local authority has the power to serve a notice<sup>7</sup> and the reason or one of the reasons by virtue of which that power arises is a failure to meet either of the requirements as to fire safety<sup>8</sup> the authority has the power for that reason to accept an undertaking or make a closing order<sup>9</sup> in respect of the house<sup>10</sup>.

If it appears to the authority that the means of escape from fire would be adequate if part of the house were not used for human habitation, it may secure that that part is not used<sup>11</sup>. For that purpose, the authority may accept an undertaking from the mortgagee or owner that that part will not be used for human habitation without the permission of the authority<sup>12</sup>. A person who, knowing that such an undertaking has been accepted uses or permits the use of the part of the house to which the undertaking relates in contravention of the undertaking commits a summary offence<sup>13</sup>. If the local authority does not accept an undertaking with respect to a part of the house or an where undertaking accepted by it is contravened, the authority may make a closing order with respect to that part of the house<sup>14</sup>.

<sup>1</sup> For the meaning of 'local housing authority' see the Housing Act 1985 ss 1, 2(2) (s 1 as amended); and HOUSING vol 22 (2006 Reissue) PARA 9.

<sup>2</sup> For the meaning of 'house in multiple occupation' see *ibid* s 345(1) (as amended); and HOUSING vol 22 (2006 Reissue) PARA 461.

<sup>3</sup> ie one or more of the following requirements: (1) there are satisfactory facilities for the storage, preparation and cooking of food including an adequate number of sinks with a satisfactory supply of hot and cold water; (2) it has an adequate number of suitably located water-closets for the exclusive use of the occupants; (3) it has, for the exclusive use of the occupants, an adequate number of suitably located fixed baths or showers and wash-hand basins each of which is provided with a satisfactory supply of hot and cold water; (4) subject to *ibid* s 365(1) (as amended) (see the text and notes 8-10 *infra*), there are adequate means of escape from fire; and (5) there are adequate other fire precautions: see s 352(1A)(a)-(e) (s 352(1A) added by the Local Government and Housing Act 1989 s 165, Sch 9 Pt III para 49).

<sup>4</sup> See the Housing Act 1985 s 352(1) (amended by the Local Government and Housing Act 1989 Sch 9 Pt III paras 49, 50).

<sup>5</sup> See the Housing Act 1985 s 352(2)(a) (s 352(2) amended by the Local Government and Housing Act 1989 Sch 9 Pt III paras 49, 50).

<sup>6</sup> See the Housing Act s 352(2)(b) (as amended: see note 5 *supra*). The notice must not specify any works to any premises outside the house: see s 352(2) (as so amended).

7 le under *ibid* s 352(1)(as amended): see the text and note 4 *supra*.

8 See *ibid* s 365(1)(b) (s 365(1) added by the Local Government and Housing Act 1989 Sch 9 Pt III para 53; and amended by the Housing Act 1996 ss 75, 227, Sch 19 Pt II). The reference in the text to the requirements as to fire safety are to the requirements in the Housing Act 1985 s 352(1A)(d), (e) (as added): see note 3 *supra*.

9 le under *ibid* s 368 (as amended): see the text and notes 11-14 *infra*.

10 See *ibid* s 365(1) (as added and amended: see note 8 *supra*).

11 See *ibid* s 368(1) (amended by the Local Government and Housing Act 1989 Sch 9 Pt III para 55). Where the authority has exercised or proposes to exercise its powers under the Housing Act 1985 s 368 (as amended) to secure that part of the house is not used for human habitation, it may specify in the notice such work only as in its opinion is required to meet such of the requirements in s 352(1A) (as added) (see note 3 *supra*) as may be applicable if that part is not so used: see s 352(2A) (added by the Local Government and Housing Act 1989 Sch 9 Pt III para 49).

12 See the Housing Act 1985 s 368(2).

13 See *ibid* s 368(3) (amended by the Housing Act 1996 s 78(5), Sch 19 Pt II). A person guilty of an offence under the Housing Act 1985 s 368(3) (as amended) is liable on conviction to a fine not exceeding level 5 on the standard scale: see s 368(3) (as so amended). As to the standard scale see PARA 7 note 1 *ante*.

14 See *ibid* s 368(4). Where the local housing authority has powers to serve a notice under s 352(1) (as amended) (see the text to note 4 *supra*) for the reason mentioned in s 365(1)(b) (as amended) (see the text and note 8 *supra*) and to accept an undertaking or make a closing order under s 368 (as amended) (see the text and notes 11-13 *supra*), it may exercise such of those powers as appear to it appropriate; and where the house is of such description or is occupied in such manner as the Secretary of State may specify by order for these purposes, the authority is under a duty to so exercise those powers: see s 365(2) (substituted by the Local Government and Housing Act 1989 Sch 9 Pt III para 53).

The Housing (Fire Safety in Houses in Multiple Occupation) Order 1997, SI 1997/230, specifies the houses to which the Housing Act 1985 s 365(2) (as substituted) applies. The local housing authority must consult with the fire authority concerned before exercising any of the powers mentioned in s 365(2) (as substituted) where it is under a duty to exercise those powers, or where it is not under such a duty but may exercise those powers and the house is of such description or is occupied in such manner as the Secretary of State may specify by order for the purposes of s 365(3): see s 365(3) (substituted by the Housing Act 1996 s 75(3)). For the meaning of 'fire authority' see PARA 17 *ante*. As to the Secretary of State see PARA 10 *ante*.

## **UPDATE**

### **81-149 Fire Precautions**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

### **149 Fire safety in relation to houses in multiple occupation**

NOTE 14--Reference to a fire authority is now to a fire and rescue authority: 1985 Act s 365(3) (amended by the Fire and Rescue Services Act 2004 Sch 1 para 62(2)). SI 1997/230 amended: SI 2005/1541.

Halsbury's Laws of England/FIRE SERVICES (VOLUME 18(2) (REISSUE))/5. FIRE PRECAUTIONS/(7) SPORTS GROUNDS/150-200. Fire safety in relation to sports grounds.

## **(7) SPORTS GROUNDS**

### **150-200. Fire safety in relation to sports grounds.**

While a general safety certificate<sup>1</sup> is in force under the Fire and Safety of Places of Sport Act 1987<sup>2</sup> for a regulated stand<sup>3</sup> at a sports ground, any provision of the Fire Precautions Act 1971 or of a fire certificate<sup>4</sup> issued under it, in so far as it relates to any matter in relation to which requirements are imposed by the terms and conditions of the safety certificate, do not apply to the stand<sup>5</sup>.

Similarly, the local authority<sup>6</sup> must send a copy of an application for a safety certificate for a regulated stand at a sports ground to the chief officer of police and where the local authority is in Wales, Greater London or a metropolitan county, the fire authority<sup>7</sup> or, in any other case, the building authority<sup>8</sup> for the area in which it is situated, and must consult them about the terms and conditions to be included in the certificate<sup>9</sup>.

The local authority must send a copy of an application for the transfer of a safety certificate for a regulated stand at a sports ground to the chief officer of police and where the local authority is in Wales, Greater London or a metropolitan county, the fire authority, or in any other case, the building authority for the area in which it is situated<sup>10</sup>.

The local authority must consult the chief officer of police and where the local authority is in Wales, Greater London or a metropolitan county the fire authority, or in any other case, the building authority about any proposal to amend, replace or transfer a safety certificate<sup>11</sup>.

A person authorised by the local authority, the chief officer of police, or where the local authority is in Wales, Greater London or a metropolitan county, the fire authority, or in any other case, the building authority, may, on production if so required of his authority, enter a sports ground at any reasonable time, and make such inspection of the stands and such inquiries relating to them as he considers necessary<sup>12</sup>, and in particular may examine records of the number of spectators accommodated, and the maintenance of safety, in the regulated stands at the ground, and take copies of such records<sup>13</sup>.

An interested party<sup>14</sup> may appeal to the court<sup>15</sup> against the refusal of anything in, or the omission of anything from, a safety certificate for a regulated stand at a sports ground, or against the refusal of the local authority to amend or replace a safety certificate for a regulated stand at a sports ground<sup>16</sup>.

1 A 'safety certificate' is a certificate under the Fire Safety and Safety of Places of Sport Act 1987 Pt III (ss 26-41) (as amended) (see BUILDING) which is required in respect of the use, at a sports ground in relation to which Pt III (as amended) applies, of each stand which provides covered accommodation for 500 or more spectators to view activities at the ground: see s 26(2); definition applied by s 41. A 'general safety certificate' means a certificate for a stand used for viewing an activity or number of activities specified in the certificate during an indefinite period commencing with a date so specified: see s 26(10)(a), s 26(11); definition applied by s 41. For the meaning of 'sports ground' see PARA 138 note 18 ante; definition applied by the Fire Safety and Safety of Places of Sport Act 1987 s 41. The Fire Safety and Safety of Places of Sport Act 1987 Pt III (as amended) applies to a sports ground which provides covered accommodation in stands for spectators and is not a designated sports ground: s 26(1). In relation to a sports ground, 'stand' means an artificial structure (not merely temporary) which provides accommodation for spectators and is wholly or partly covered by a roof, and, in relation to the number of spectators in a stand provided with covered accommodation; 'covered' means covered by the roof or other part of the structure which constitutes the stand: 26(11). As to the safety of sports grounds generally see BUILDING.

2 I.e. under ibid Pt III (as amended): see BUILDING.

3 A 'regulated stand' is a stand in respect of the use of which a safety certificate under *ibid* Pt III (as amended) is required: see s 26(5).

4 As to fire certificates see PARA 83 *et seq ante*.

5 See the Fire Safety and Safety of Places of Sport Act 1987 s 33(1)(b).

6 'Local authority' means (1) in Greater London, the London borough council or the Common Council of the City of London; (2) in England, in the metropolitan counties, the district council; (3) in England outside Greater London and the metropolitan counties, the county council; (4) in Wales, the county council or county borough council: *ibid* s 41 (amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 81(2), Sch 18).

7 For the meaning of 'fire authority' see PARA 17 *ante*.

8 'Building authority' means outside Greater London and the metropolitan counties, the district council: see the Fire Safety and Safety of Places of Sport Act 1987 s 41 (amended by the Local Government (Wales) Act 1994 Sch 16 para 81(2), Sch 18).

9 Fire Safety and Safety of Places of Sport Act 1987 s 28(10) (amended by the Local Government (Wales) Act 1994 Sch 16 para 81(1)(a)).

10 Fire Safety and Safety of Places of Sport Act 1987 s 29(7) (amended by the Local Government (Wales) Act 1994 Sch 16 para 81(1)(b)).

11 Fire Safety and Safety of Places of Sport Act 1987 s 29(8) (amended by the Local Government (Wales) Act 1994 Sch 16 para 81(1)(b)).

12 *Ie* for the purposes of the Fire Safety and Safety of Places of Sport Act 1987 Pt III (as amended).

13 *Ibid* s 35 (amended by the Local Government (Wales) Act 1994 Sch 16 para 81(1)(d)).

14 For these purposes, 'interested party' in relation to a safety certificate includes (1) the holder of the certificate (Fire Safety and Safety of Places of Sport Act 1987 s 30(8)(a)); (2) any other person who is or may be concerned in ensuring compliance with the terms and conditions of the certificate (s 30(8)(b)); (3) the chief officer of police (s 30(8)(c)); and (4) where the local authority is in Wales, Greater London or a metropolitan county, the fire authority or, in any other case, the building authority (s 30(8)(d)) (amended by Local Government (Wales) Act 1994 Sch 16 para 81(1)(c)).

15 The 'court' means a magistrates court acting for the petty sessions area in which it is situated: see the Fire Safety and Safety of Places of Sport Act 1987 s 41.

16 *Ibid* s 30(4).

## UPDATE

### 150-200 Fire safety in relation to sports grounds

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 4--1971 Act replaced: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

TEXT AND NOTES 6-9--If the local authority is not the fire and rescue authority or the building authority, a copy of the application must also be sent to the fire and rescue authority and the building authority, for the area in which the sports ground is situated: 1987 Act s 28(10) (amended by the Fire and Rescue Services Act 2004 Sch 1 para 63(2)).

TEXT AND NOTE 10--If the local authority is not the fire and rescue authority or the building authority, a copy of the application must also be sent to the fire and rescue authority and the building authority, for the area in which the sports ground is situated: 1987 Act s 29(7) (amended by the 2004 Act Sch 1 para 63(2)).

TEXT AND NOTE 11--If the local authority is not the fire and rescue authority or the building authority, the local authority must also consult the fire and rescue authority and the building authority about any such proposals: 1987 Act s 29(8) (amended by the Fire and Rescue Services Act 2004 Sch 1 para 63(3)).

NOTE 14--Now, head (4) if the local authority is not the fire and rescue authority, the fire and rescue authority (s 30(8)(d) (s 30(8)(d), (e) substituted by the 2004 Act Sch 1 para 63(4)); and (5) if the local authority is not the building authority, the building authority (s 30(8)(e) (as so substituted)).